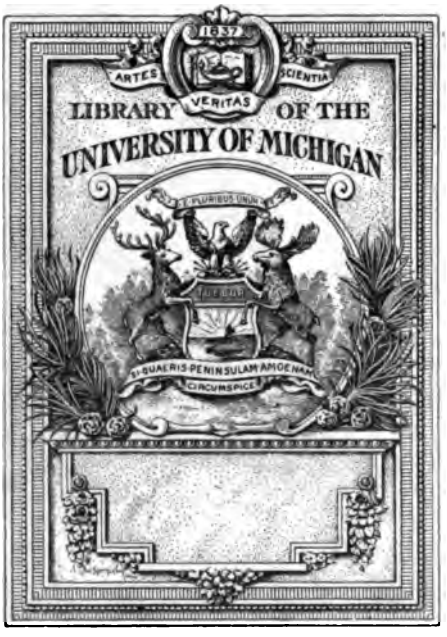
# REMINISCENCES OF THE GENEVA TRIBUNAL

FRANK WARREN HACKETT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# REMINISCENCES OF THE GENEVA TRIBUNAL

# REMINISCENCES OF THE GENEVA TRIBUNAL OF ARBITRATION 1872

## THE ALABAMA CLAIMS

BY

FRANK WARREN HACKETT


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TO MY WIFE

IDA CRAVEN HACKETT

# PREFACE

It is now almost forty years since the Tribunal of Arbitration at Geneva happily disposed of the famous "*Alabama* Claims," that had at one time threatened to bring on a war between the United States and Great Britain. The loser paid with a good grace the sum of fifteen millions five hundred thousand dollars in gold, as indemnity; and the two countries ever after have been all the firmer friends.

As Secretary to Mr. Caleb Cushing, senior American Counsel, I did my share of clerical work, at Paris, in the preparation of our Counter-Case and Argument; and, going to Geneva, I was present at the sessions of the Tribunal open to Agents and Counsel. I thus gained at first hand a store of information; and moreover, made the acquaintance of all the actors in this great, international drama. Incidents fell under my observation that have not heretofore been made public, and yet they are not without value in throwing light upon the record of what was accomplished during that memorable summer in Switzerland.

For some time I have been minded to tell the story of Geneva in the form of Personal Recollections. But no sooner did I enter upon the project than I discovered that, in order to impart to a new generation a correct idea of these proceedings, it was

needful first to explain the origin of the "*Alabama* Claims," and point out the reasons why, for a certain period, they had assumed an importance so overshadowing; and further to set forth the grounds upon which we maintained that Great Britain had become responsible to us for damages. To do this meant something more than to jot down notes of one's own personal experience. It was to furnish at least the outlines of a history.

In the following pages an attempt has been made to combine the easy and familiar terms of personal reminiscence with that more sober delineation of events, and that graver tone of reflection, which are demanded of a work professedly historical.

To kindly disposed friends and correspondents, both here and abroad, who have given me aid and encouragement, I return a most grateful acknowledgment. I may not estimate the extent of my obligations to the late Honorable John Chandler Bancroft Davis. If the praise accorded by me to this distinguished man shall seem to go beyond bounds, I can only say that I am not conscious that in a single instance has my judgment been affected by that warm attachment with which he long ago inspired me. Nor can I sufficiently thank the accomplished wife who has survived him. Her remarkably full and exact knowledge of what took place at Washington, at London, at Paris, and at Geneva, is equalled only by the keenness with which she interpreted its diplomatic significance.

The assistance rendered by Mrs. Bancroft Davis has been invaluable.

The work of the Tribunal of Arbitration of 1872 stands as a great landmark of the nineteenth century. Time cannot lessen the interest with which the statesman must look back upon it. If what I have written shall afford to the reader a somewhat clearer vision of the meaning and the lasting effect of what was wrought out at Geneva, together with a just estimate of the services of each eminent personage, American or English, Italian, Swiss, or Brazilian, who contributed to bring about that splendid victory for peace, I shall feel that my labors have indeed been well rewarded.

WASHINGTON, September, 1910.

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# LIST OF BOOKS

THE following is a list (not complete) of books that may be consulted with reference to the "*Alabama* Claims," and their disposition by the Geneva Tribunal of Arbitration: —

I. Correspondence concerning claims against Great Britain, transmitted to the Senate of the United States in answer to the resolutions of December 4th and 10th, 1867; and of May 27th, 1868. Volumes I and II (1869); III, 1870; IV, 1869; V, 1870. Correspondence concerning claims against Great Britain, volumes VI, 1871; VII, 1871 (volume VII contains a list of claims). Washington: Government Printing Office.

II. The National and Private Alabama Claims, and their Final and Amicable Settlement, by Charles C. Beaman, Jr. Washington, 1871.

III. A Historical Account of the Neutrality of Great Britain during the American Civil War, by Mountague Bernard, M.A., Chichele Professor of International Law and Diplomacy in the University of Oxford. London, 1870.

IV. Papers relating to the Treaty of Washington. Washington: Government Printing Office, 1872.

Vol. I. Geneva Arbitration: Containing the Case of the United States; the Case of Great Britain; the Counter-Case of the United States; and a portion of the additional documents, correspondence, and evidence which accompanied the same.

Vol. II. Geneva Arbitration: Containing the remainder of the papers accompanying the Counter-

Case of the United States; Counter-Case of Her Britannic Majesty's Government; Instructions to the Agent and Counsel of the United States, and Proceedings at Geneva, in December, 1871, and April, 1872; correspondence respecting the Geneva Arbitration, and the proposed supplemental article to the Treaty; and declaration of Sir Stafford Northcote, at Exeter.

Vol. III. Geneva Arbitration: Containing the Argument of the United States; Argument of Her Britannic Majesty's Government and Supplementary Statements, or Arguments, made by the respective Agents or Counsel.

Vol. IV. Geneva Arbitration: Containing the report of the Agent of the United States; Protocols of the Conferences; Decision and Award of the Tribunal; Opinions of the Arbitrators; Reply of the Secretary of State, acknowledging the receipt of the Report of the Agent of the United States, and commenting upon the opinion of the Arbitrator appointed by Her Britannic Majesty; Report of the Counsel of the United States; and Opinions of statesmen, magazines, and journals of Great Britain and the Continent on the construction of the Treaty.

V. The Annual Register for the year 1872. London, 1873. Chapter I, pp. 22–24, and chapter IV, pp. 88–118.

VI. British State Papers: 1873, volume 74.

VII. The Treaty of Washington. Its Negotiation, Execution, and the Discussions relating thereto, by Caleb Cushing. New York, 1873.

VIII. The Geneva Award Acts: With notes and references to decisions of the Court of Commissioners of

*Alabama* Claims, by Frank W. Hackett, of the Washington (D. C.) Bar. Boston, 1882.

IX. Twenty Years of Congress, from Lincoln to Garfield, with a review of the events which led to the Political Revolution of 1860, by James G. Blaine. Norwich, Conn., 1886. Volume II, chapter XX.

X. The Life of Lord John Russell, by Spencer Walpole. London, 1889, volume II, chapter XXIX, The American Civil War.

XI. Life, Letters, and Diaries of Sir Stafford Northcote, First Earl of Iddesleigh, by Andrew Lang. Edinburgh and London, 1890, volume II.

XII. Mr. Fish and the *Alabama* Claims, a Chapter in Diplomatic History, by J. C. Bancroft Davis. Boston and New York, 1893.

XIII. History and Digest of the International Arbitrations to which the United States has been a party, together with appendices containing the treaties relating to such arbitrations and historical and legal notes on other international arbitrations ancient and modern, and on the domestic commissions of the United States for the adjustment of International Claims, by John Bassett Moore, Hamilton Fish Professor of International Law and Diplomacy, Columbia University, New York, Associate of the Institute of International Law, sometime Assistant Secretary of State of the United States, author of a work on Extradition and Interstate Rendition, of American Notes on the Conflict of Laws, etc., in six volumes. Volume I, chapter XIV, The Geneva Arbitration. Washington: Government Printing Office, 1898.

XIV. Memorials, Part II. Personal and Political, 1865–1895, by Roundell Palmer, Earl of Selborne, Lord

High Chancellor. London, 1898. Chapter x, The Treaty of Washington; xi, The Geneva Arbitration: The Indirect Claims; xii, Geneva, Our Companions — The Arbitrators — The Final Award.

XV. International Courts of Arbitration, by Thomas Balch. Philadelphia, 1899.

XVI. Charles Francis Adams, by his son, Charles Francis Adams. (American Statesmen.) Boston and New York, 1900.

XVII. The *Alabama* Arbitration, by Thomas Willing Balch. Philadelphia, 1900.

XVIII. Lee at Appomattox, and Other Papers, by Charles Francis Adams. Boston and New York, 1902. II. Treaty of Washington; Before and After. Second Edition, enlarged, 1903.

XIX. Reminiscences of Sixty Years in Public Affairs, by George S. Boutwell. 2 volumes. New York, 1902.

XX. The Life of William Ewart Gladstone, by John Morley. London and New York, 1903.

XXII. The Life of Granville George Leveson Gower, Second Earl Granville, K.G., 1815–91, by Lord Edward Fitzmaurice. London and New York, 1905. 2 vols.

XXIII. History of the United States, from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877, by James Ford Rhodes, LL.D Litt.D., Member of the Massachusetts Historical Society Volume vi, 1866–1872. New York, 1906. Chapt xxxviii, Foreign Affairs — *Alabama* Claims — Cha Francis Adams, the Hero of the Tribunal.

XXIV. The History of Twenty-five Years, 18 1880, by Sir Spencer Walpole. Vol. iii. London, 1

# REMINISCENCES OF THE GENEVA TRIBUNAL

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## CHAPTER I

### SECRETARY TO CALEB CUSHING

It was my fortune early in 1872 to accompany Caleb Cushing from New York to Paris, and later to Geneva, as his private secretary. Mr. Cushing had been appointed senior member of the American Counsel for the United States before the Tribunal of Arbitration, created under the Treaty of Washington, to dispose of the so-called "*Alabama* Claims," that had been in dispute between the United States and Great Britain. In this capacity I naturally came into possession of some facts of more or less interest relating to the conduct of our Case at Geneva. These facts, it seems to me, are worthy of being put upon record, since they throw a side-light of no little value upon what was done in that memorable affair, and are thus helpful to history in reaching a just and impartial verdict.

It may be well enough for me to explain how I happened to be situated so as to be able conveniently to accept, at short notice, an invitation to go abroad with Mr. Cushing.

Six years previous, I had been admitted to the bar, whereupon I had opened a law-office in Court Square, Boston. Clients are proverbially slow to discover hidden talent; and Boston enjoyed the reputation of being probably the most difficult locality in the whole country in which a young lawyer could get a footing. But by sticking closely to my office, and attending carefully to what little business was put into my hands, I approached by slow degrees the point where a fair prospect had opened for a steadily increasing income. But in the summer of 1870, certain symptoms admonished me that the climate of Boston was not suited to my health. Taking the advice of the best-qualified specialist in town, as well as one of the noblest and kindest of men, Doctor Henry Ingersoll Bowditch, I closed my law-office temporarily, and perfected arrangements to spend a year in the dry, bracing air of Minnesota.

I went out to St. Paul, and thence to Minneapolis. Here, by spending a large part of each day out of doors, riding horseback, and taking long walks, I passed a happy winter, with the result that every sign of weakness of the lungs completely disappeared.

During the summer of 1871, the problem presented itself for solution whether upon the whole it was safe to resume practice in Boston. Doctor Bowditch again applied his stethoscope, and pronounced the verdict that it was better for me not to venture to live in Boston. Accordingly, I closed my law-

office, and later in the season again started for St. Paul, with a purpose half-formed of settling down in that thriving city to the practice of my profession.

The experience I underwent en route at Chicago was remarkable enough to warrant my making of it a brief mention. Arriving there on Friday night, our train killed a passenger just as we were entering the station. On Saturday night, a burglar was shot in a dwelling-house, in one of the most fashionable streets. Chicago seemed to me a lively place. I was paying a brief visit to a friend of my Harvard Law School days, David B. Lyman, who lived near Washington Square. On Sunday evening, hearing an alarm of fire not far off, Lyman and I went out to see what it meant. I remember our climbing upon the roof of a low wooden outhouse, whence we had a view of what promised to be rather an extensive conflagration. After looking at the progress of the fire for a while, and taking it for granted that it would in due time be extinguished, we returned to the house; and I went to bed.

Sometime after midnight Lyman aroused me, and said that Portland Block, in which was his law-office, was gone. To be brief, this fire was the famous burning-up of Chicago, which destroyed more than two thousand acres of buildings. For twenty-four hours near Lyman's house horses had stood harnessed ready to take us to a place of safety, — in case the wind should shift and sweep our house away. My trunk had been sent to the station. I

had expected to start for St. Paul that morning, but whether the railroad station remained in existence or not, I felt almost ashamed to enquire. It fortunately happened, however, that the fire stopped, after having swept up to the very block on which the station stood.

On Sunday morning, I had heard Robert Collyer preach at the Unitarian Church. After the sermon a man, evidently out of his wits, stood up, wildly gesticulated, and in a loud voice uttered denunciations. Two gentlemen approached him, and quietly led him down the aisle and out of the church, he all the way making imprecations. A vague sense of an omen impressed itself on my mind. Before twenty-four hours had elapsed the church was level with the ground.

As I walked down that morning into what had been the business district, in regions where great buildings had stood, I saw men gathered into groups and I listened to their remarks. Not one was complaining; but everywhere I could hear the expression of dauntless resolve. Knowing that an account of this great disaster would be eagerly read, I scribbled off a description of considerable length, and addressed the letter to the New York *Times*. There was not a post-office to be found; nor indeed could I discover the sign of a place for running out trains. Finally, I came across a man on the railroad tracks, who told me that he was a brakeman, and that he meant to go out on the first train that should be sent

East. At my request, he took the letter, and promised me that he would mail it. I never heard what became of that letter. I boarded the very first train to leave the smoking ruins for Milwaukee and St. Paul. There was, I remember, a poor woman on board, who, with her child, was trying to get to relatives in Minnesota. She had lost everything. A generous subscription was taken up among us passengers for her relief.

Arriving at St. Paul early in the forenoon, I made my way directly to the office of the *Evening Dispatch*, not far from the station. I told the editors that I would gladly furnish them with some details of the calamity. Since I happened to be the first person from Chicago seen at that office, they were quick to accept my offer. Seated at a table, I filled sheet after sheet, as fast as pen could travel, and in an incredibly short time I could hear the newsboys crying their "Extra" in the street.

My plan as to opening a law-office requiring further reflection before a final decision, — I don't mind at this distance of years confessing that a longing to be back on the seaboard had something to do with it, — I resolved to go again to Minneapolis for a while, and put myself under another regimen of out-of-door exercise. So I went thither, and renewed with genuine pleasure the agreeable footings of the previous winter. This plan turned out to be a wise move. What with horseback-riding, daily walks, an occasional sleighing-party, a moder-

ate study of law and much general reading, — all supplemented by an observance of regular hours for sleep, I soon began to experience a sense of growing, day by day, into the buoyancy of a vigorous physical condition.

One Saturday evening, when the thermometer was ranging far below zero, I entered Brigham's boarding-house, on Hennepin Avenue, with the glow upon me of a brisk walk, and found a telegram by the side of my plate, at the tea-table. My friend and classmate, Charles Cotesworth Beaman, was asking me from Washington if I could go to Geneva as private secretary to Caleb Cushing. Recommending me for this post was most kind of Beaman, who knew of my enforced leisure, and who wished to do me a great favor.

Mr. Cushing, I was aware, was going abroad as Counsel for the United States before the Tribunal of Arbitration, created by the Treaty of Washington, for the settlement of the "*Alabama* Claims." I also knew that Beaman had been made Solicitor for the United States, to prepare a list of the claims, and their amounts, together with proof of the same; and that he was, in that capacity, to accompany the Counsel abroad. I recalled the circumstance that William M. Evarts of New York and Morrison R. Waite of Ohio were also of Counsel.

No serious obstacle being in the way, I promptly accepted this wholly unexpected invitation. The last night of my stay in Minneapolis was passed in

the hospitable chambers of my good friend, the late Samuel R. Thayer.[1] By starlight the next morning, the 16th of January, I was driven in a sleigh to the railroad station, bound for Washington.

An accident to a freight-train, not far from Fort Wayne, detained us for a while, until a temporary track could be laid around the wreck, over which track we slowly crawled. I was impressed with the facility with which the work was handled. As if this were not enough to get us on bad terms with the time-table, a breakdown occurred near Harrisburg, and our train became decidedly worsted. One trifling incident of this journey remains in my memory. Before we had reached Baltimore, the conductor came along and put into the hand of every through passenger an envelope containing a sum of money. The obolus was designed to be paid to the Charon of a Baltimore and Ohio conductor, who upon these terms would let us go over to the National Capital. This curious performance, it seems, had become needful because of a war then raging between the two corporations.

We reached Washington at last. I walked through the cavernous and dingy structure, at the corner of New Jersey Avenue and C Street, that constituted the only railroad station[2] in the city, and took my course to the Department of State. This Department was at that day housed in an ugly brick build-

[1] Subsequently (1899–1903) our Minister to the Netherlands.

[2] Abandoned only in 1907, for the magnificent Union Station.

ing upon Fourteenth Street North-West, at the corner of S. One could see at once that its contracted quarters were grotesquely unfit for such occupancy.[1] Here I found Beaman at work amid a mass of papers and documents. He welcomed me heartily. After imparting such information as I needed in respect to our future movements, he directed me to the office of Mr. Cushing.

Putting myself in calling order, I waited upon that distinguished lawyer, whom I found in a room upstairs, in a house on the south side of H Street, near Fourteenth, occupied by the Mexican and American Claims Commission. For a considerable period Mr. Cushing had been acting as counsel for Mexico, but this office he had resigned in order to take up his new duties. I beheld a fine-looking man, of an imposing presence, a face full of intellectual force, with eyes sharp and penetrating. His hair had but just begun to turn grey. But let me borrow a description from a townsman of Mr. Cushing, who had known him well throughout his career: —

"He was handsome, of full size, well-built, robust and strong; and with that fine, firm color in his cheek, even to the last of his life, that implies good health and a vigorous constitution. . . . His complexion was fair, and his dark

[1] It was here that the Treaty of Washington had been signed, 8 May, 1871. The Department, which had occupied the building since 1866, removed in 1875 to the granite structure west of the White House, which it has outgrown. For many years the Fourteenth Street building has been the home of the Washington City Orphan Asylum.

eyes, which were rather small, were very bright and restless, indicating great mental activity and acuteness; but his distinctive qualities were to be seen in the lower part of his face, which was notably firm, resolute, and aggressive." [1]

The General (for President Polk had appointed him a brigadier-general of volunteers during the War with Mexico, Cushing having raised a regiment at his own expense, of which he went out as colonel) closely inspected the newly arrived candidate. He put a few questions. I let him know that I was not afraid of work. So far as I could detect, he discovered in his young caller no special mark of disqualification. General Cushing's cordial and considerate bearing gave me full assurance that our relations were going to be most agreeable. Having imparted a suggestion or two, regarding the nature of the services that he expected me to perform, he directed me to be in New York, at a date named, ready for sailing. Taking the first train, I went to visit my parents for a few days at Portsmouth, New Hampshire.

On the day appointed, the 26th of January, at nine o'clock in the morning, I reported at the Astor House for duty. Mr. Cushing promptly set me to work. The first thing I found out was how extremely methodical was his habit of attending to even the

[1] Eben F. Stone (Harvard, 1843) of Newburyport, a leader of the Bar, and a member of Congress: *Address delivered before the Essex Bar* (1889), p. 21.

smallest detail of business. Every scrap of paper, every card of a visitor, had to be saved, and filed away in its proper place, — absolutely without exception.

For a beginning, I was asked to go out into the streets and hunt up young Mr. Waite, the son of Mr. Waite of our counsel. "He is somewhere in the city. He is going to sail with us to-morrow, and I think you had better go out and see if you can find him."

This I proceeded to do, and by good luck I was able within a very short time to lay hold upon the gentleman in question and bring him in to see Mr. Cushing. He proved to be a lively, attractive fellow.

We were scheduled to sail at three o'clock, Saturday afternoon (27 January, 1872), in the *Ville de Paris* of the French Line, a favorite ship, reputed to be the fleetest Atlantic steamer afloat. The ship started on time. Though it was a bleak day, a group of friends were standing upon the wharf to see us off. The names of two now living I can recall: Elihu Chauncey (my classmate) and John Clinton Gray, — the latter, since 1888, a judge of the New York Court of Appeals.

Our party consisted of Mr. Cushing (who was taking with him Andrew, a faithful colored attendant from Virginia), Mr. Beaman, Mr. John Davis, Mr. Edward T. Waite, and myself.

The passengers numbered about fifty, a fair list

for that season of the year. Among them was Mr. H——, of a large New England manufacturing city, amusing and good-natured. He had made a fortune, and he announced to us his intention of spending his money freely. He confided to me one afternoon, in the lee of the smokestack, what seemed at the moment information of a startling character, to the effect that he was going to buy paintings in Italy. "I guess ten thousand dollars for a beginning ought to get a good lot of pictures,—don't you think so?" I told him I did.

Captain Surmont, the best sailor on the line, commanded the *Ville de Paris*. He was a fine-looking man, of large frame, bluff and hearty. Mr. Cushing, as the passenger of the highest distinction, sat at the Captain's right hand at dinner. Since the Captain quite regularly occupied a seat at the head of the table, we had occasion to observe his polite and attractive manners. A few years later than the period of which we are now speaking, it was Captain Surmont's fate to have command of the *Ville de Havre*, when that ship was sunk in mid-ocean by collision, with the loss of many lives. Her gallant commander was rescued from the water to survive for but a brief season. It is thought that Surmont died of a broken heart. His kind bearing to us young men I shall never forget.

My chief, good sailor that he was, appeared to enjoy every moment on shipboard. He would pace the deck clad in an old coat coming down to his

heels, and a tight-fitting cap that had little to do with the prevailing fashion. He was no stranger to the democratic gathering of the smoking-room. Let a question be asked, and Mr. Cushing would respond with a flood of information. The more out-of-the-way the topic, the more abundantly would this remarkable man draw upon a store of memories seemingly inexhaustible. If one ventured an enquiry bearing a little too closely upon the subject of his mission abroad, the rest of the company could only admire the ingenuity and kindly shrewdness with which the Counsel for the United States set to talking about something else. We left Sandy Hook at five on the afternoon of Saturday, 27 January. Our voyage was uneventful. The weather behaved fairly well, considering that it was mid-winter. The sea continued smooth nearly all the way over; though we had a cold, foggy and generally disagreeable time of it off the Banks, — with squalls enough to maintain the reputation of that locality. On the evening of our last day on board, Captain Surmont gave a dinner of special excellence, with some extra adornment, — a drinking of healths, and an exchange of other compliments befitting the occasion. When I awoke on Tuesday morning, the 6th of February, they told me that we were lying at anchor in the harbor of Brest.

History perhaps would scarcely turn aside to record the incident I am about to relate. Still, I think I shall be pardoned for letting it come in as a

part of the *ana* of the Tribunal of Arbitration. At all events, it occurred while our faces were set toward Geneva.

There were on board two or three handsome American girls, with whom the young secretaries felt it a duty to get acquainted. One evening, the moon was in the sky (at least, I am going to put it there), the sea was smooth, and the ship was bowling along in good shape with much sail set, — what breeze there was being favorable. Not having anything else to do, I was trying to make myself agreeable to Miss ——, who was seated well aft by the rail. Not far from us was a good-looking, young officer, of slender figure, walking to and fro, it being his watch on deck. He had already been presented; and I could see him cast an envious glance at me as he passed. In a spirit of generous, international sympathy (and just for the fun of the thing), I watched an opportunity, and taking off my cap, I offered to exchange it for the gold-laced one that he wore. He politely handed me his, — I put it on, and proceeded myself to take the deck. The young gentleman of France needed no urging. I shouldered all the nautical responsibility of the moment, and walking off a bit further forward, left him seated by the side of the fair American for a few minutes. It seemed long. The ship kept on her course.

Surely so gallant an instance of self-sacrifice ought not to go unchronicled. That daring young fellow may now be on the bridge — a grizzle-bearded com-

mander, who would not for an instant dream of tolerating such a flagrant breach of discipline on board his ship.

Yet the young lady was undeniably handsome. And remember, a moon figured in the transaction.

On the morning of the 6th of February, at an early hour, our little party, save one member, was landed at Brest, the seat of a great naval establishment. Mr. John Davis, who had brought over a mass of papers and documents from the Department of State, to be used in preparing the Counter-Case of the United States, was to stay on board the ship till she reached Havre, whence he was to go by rail to Paris.

Although our stay would be very brief, we repaired to the *Hôtel La Marque;* and later, made a tour of observation. There was not much, however, to detain us, and we were ready to depart at the noon hour. We had planned to pass the night at the interesting town of Rennes, formerly the capital of Brittany. We arrived there after dark, and took rooms at the Grand Hotel.

I shall never forget my first night in a foreign land. The bronzes on the mantel of the room, and the great eiderdown coverlets on the bed reminded me that I was trying to go to sleep in a strange country. As it was, I did not grow drowsy. I heard the singing of the commune, or fancied that I did. The melodious chiming of the quarter-hours (to me a novelty) helped to keep the traveller in a state of rather pleasurable wakefulness. At last, however,

being really tired, I had begun to enjoy a slumber when something roused me. My ear detected the sound of distant voices that seemed, as I listened, to be coming nearer, and the playing in a low, sweet key of some musical instruments. Opening the window, I looked down into the narrow street that curved below, and beheld what appeared to be a company of revellers returning from a wedding-feast. They carried torches, and they tripped along with an air of jollity.

As the tones died away, I wished good luck to the bride and groom, and felt grateful that quiet had been restored. Later in the night, a second body of celebrants passed through the street below, and I was aroused to make a note of the fact. Wondering if any particular advantages were attached to this curious custom, or whether nuptials in broad daylight were not more considerate of that portion of the public who could expect no invitations, I composed myself again to rest, only to have it broken, so I could attend to the coming of still a third band, a bit noisier than either of its predecessors. What little was left of the morning I devoted to a series of short naps.

At four o'clock I was aroused by a knocking at the door, intended to have me up at five o'clock. At the latter hour, I was dressing by candlelight, so as to go with my chief to early mass at the Cathedral of Saint-Pierre, hard by. Though seventy-two years of age, and familiar with the customs of a Catholic

country, Mr. Cushing had a youthful desire to see for himself what was going on, wherever he happened to be. We went together to the service, which lasted from six o'clock to seven. There was a goodly attendance in point of numbers; and I saw much that was new and interesting, though to tell the truth, the celebration did not carry to me the meaning that it should.

Taking carriages later, we visited numerous points of interest in the town, and found much that was worth seeing. In the Palais de Justice we looked into three court-rooms. In one building we saw the hall where formerly the States-General used to hold sessions. There were paintings also that attracted us, of which I might mention one by Rubens; also, a Ruth and Naomi, that I thought particularly pleasing; a portrait of Boulay Paty, and the like.

At three in the afternoon our little party boarded the train for Paris, distant about two hundred and thirty-five miles. A stock of provisions had been judiciously laid in for the journey; and Andrew, who was skilful at the business, took pains in preparing the repast. As upon the day previous, Mr. Cushing showed himself to be livelier than even the youngest of us. He told several good stories, in an animated tone, and generally proved himself to be a delightful companion. If ever such an article has existed as Governor Kirby's forty-year-old sherry, then that was just what Andrew produced from our bountiful hamper, and what we employed in loyally drinking

to the success of the United States at Geneva. It was well after midnight when the train stopped at the Gare du Nord, where our journey by rail was to end.

The streets of Paris were brilliantly lighted, and my first impressions were gained from the windows of a swift-moving carriage. At last we turned into the Rue de la Paix, and were set down at the Hotel Westminster, where we were expected, and where we received a warm welcome.

Here we may properly pause, and take a rapid survey of the origin of the "*Alabama* Claims," and of their disturbing history, in our attempt to realize the intensity of the feeling engendered between Great Britain and the United States during a long period of unrest. We shall look into the succession of events which culminated in the Treaty of Washington. This we may do in order to gain an insight into the meaning of what, at Geneva, was asserted on one side, and denied on the other; and that the reader may comprehend the true significance of what the Tribunal of Arbitration, in the peace of the world, and to the lasting credit of two great nations, then and there for all time determined.

## CHAPTER II

### THE UNFRIENDLINESS OF GREAT BRITAIN

In 1861, and indeed down to the close of the struggle that the nation was making for its life, anxious eyes were turned towards Europe. At the beginning of the war, the loyal North viewed with many misgivings the conduct of England and France, — especially that of England. Of course, it was the manifest duty of those powers to maintain in perfect good faith a strict neutrality.

The Northern people with indignation saw, or conceived that they saw, from the outset a course of conduct on the part of the Government of Great Britain which could mean nothing else than sympathy and aid for the Southern Confederacy. This conduct was begun so early, and was so steadily maintained, that a feeling of resentment took possession of the United States, — a feeling which finally reached a degree of bitterness that threatened to bring on war. Happily every trace of a hostile spirit on the part of our country towards England has long since disappeared. But the reader of the present generation has only to turn to the public journals of that memorable period in the loyal States to discover how cordial a dislike for England then displayed itself throughout the land, and partic-

ularly in both branches of the Service. It is useless to imagine that no justification whatever existed for the origin and growth of this animosity. Of course, in a civil war, unhappily, the passions of men rise to an unwonted height; objects seen through the mist of such passions are unduly magnified. Making proper allowance for this distortion, it still remains that those in authority in Great Britain were in truth chargeable with displaying an unfriendly spirit towards the United States, a country with which Great Britain was at peace.

When the friends of the Union were of a sudden called upon to defend the flag, they took it for granted that their Anglo-Saxon kinsmen across the sea would hasten to evince some unmistakable token of sympathy. Fighting as they were in behalf of free institutions, they not only counted upon an expression of good-will from a country that years before had abolished slavery, but they longed for that expression. In order that the full force of this desire may be understood, the reader should be advised, if he do not know it already, that the people of the United States at that day were peculiarly sensitive to English criticism. Down to the outbreak of the rebellion it had been a common practice for American newspapers regularly to furnish their readers with a publication in full of such English editorials, or long extracts therefrom, as had the least bearing upon our political affairs, — and there was no lack of them. As yet, in the world of litera-

ture and of politics we had not outgrown our colonial dependence. We were childishly eager to learn what such oracles as the *Times*, the *Spectator*, and the *Saturday Review* had to say of us.[1] All unconscious of the limitations of these writers (sometimes even of their downright ignorance) we stood ready to accept their views, and attribute to them a profundity of wisdom which in reality no one of them ever possessed. Indeed, it was the war itself that at last delivered us from this species of intellectual thraldom to England.

We looked to England for a kind word, recalling that she was the "mother country," and we heard it not. There came a speedy and rude awakening from our dream. As frequently happens when people find themselves thus mistaken, we at once cast upon the other party all the blame for our mortification.

Instead of sympathy we encountered proofs of a prevailing sentiment of friendliness for the cause of secession. We beheld the governing classes holding out to the South, as it were, a helping hand. We beheld persons of rank, as well as those of moderate

[1] After South Carolina had seceded, *Punch* observed that the "United States" had become the "Untied States." There were those who read into the text a grim irony that did not belong to it. In the exciting hours of actual warfare we were confronted not only with the momentous enquiry as to what England would do officially, but with a further question of what was to be the attitude of the Englishman in his private capacity. What might we expect as the sentiment of the club, the pulpit, the street?

means, hastening to subscribe to the Confederate loan. We noted speeches in Parliament delivered by members who openly declared their belief in the speedy success of the Confederate arms. Lord John Russell, and others of the Ministry, appeared to us in the light of statesmen who meant to favor the South, and were glad to do so. We saw "rebel emissaries,"[1] though not received officially, greeted in high places with every mark of personal consideration. Most of all, we knew that work was going forward briskly in English shipyards upon vessels that were to be built, armed, equipped, manned, and sent forth upon the ocean, to prey upon the commerce of the United States. In fine, it was not long before, to borrow the language of the American Case, we beheld in England, "the dockyard and arsenal of the insurgents."

It is easy to cite documentary proof that such was the condition of affairs in England during the period of the war for the Union. One or two instances, however, must suffice.

[1] If to the youth of to-day "rebel" seems archaic, he should be reminded that in war-times the word was on the lips of every loyal Union man. In the American Case the term used is "insurgent"; while the British Case employs the expression "Confederate." Mr. Mason, in London, and Mr. Slidell, in Paris, were spoken of in the United States as "rebel emissaries." One of the convincing proofs of a genuine union of sentiment between North and South is disclosed in the almost universal custom to-day of adopting quietly the word "Confederate," throughout the North, when reference is made to those who once fought against the flag.

Mr. Gladstone, in a speech at Newcastle, 7 October, 1862, said: —

"We may have our own opinions about slavery; we may be for or against the South; but there is no doubt that Jefferson Davis, and other leaders of the South, have made an Army. They are making, it appears, a Navy, and they have made what is more than either, — they have made a Nation (loud cheers). . . . We may anticipate with certainty the success of the Southern States, so far as regards their separation from the North. (Hear! Hear!) I cannot but believe that that event is as certain as any event yet future and contingent can be. (Hear! Hear!)"[1]

[1] *Papers relating to the Treaty of Washington*, vol. I, *Geneva Arbitration*, p. 41. (Hereafter these volumes will be cited as "*Gen. Arb.*")

To say nothing of the amazing indiscretion exhibited by a Cabinet Minister, this unfortunate speech will be remembered for its revealing, as if by a flashlight, the true attitude of the British Ministry at that critical period towards the United States. Time and place, as well as the language employed, were all too significant to permit of any other meaning than that which people in both countries attached to this utterance. Naturally such an announcement created a profound sensation; indeed it might have almost presaged war.

The occasion was of no ordinary moment. The Northern Liberals had planned that Mr. Gladstone should visit Newcastle and other places, for political effect. "The people of the Tyne," says his biographer, "gave him the reception of a king." (Morley, vol. II, p. 77.) Bells rang, immense crowds thronged the streets, the ships were decked with flags, and there was a procession on the river. The banquet (7 October) was crowded. Everybody keenly listened to mark the all-important utterance of the great statesman.

Lord Palmerston had by letter (24 September, 1862) begged the Chancellor of the Exchequer not to let the country know that it was spending more money than it could afford. Turning to a topic, where there was a far greater need of caution, Palmerston seems to

In the House of Commons, on the 30th of June, 1863, Mr. Gladstone, in the course of a long speech, observed: —

"We do not believe that the restoration of the American Union by force is attainable. I believe that the pub-

have neglected to advise a judicious silence. He informed Mr. Gladstone that "he himself and Lord Russell thought the time was fast approaching when an offer of mediation" ought to be made by England, France, and Russia; and that Russell was going privately to instruct the Ambassador at Paris to sound the French Government. "Of course," Lord Palmerston said, "no actual step would be taken without the sanction of the Cabinet. But if I am not mistaken, you would be inclined to approve such a course." The proposal would be made to both North and South. If both should accept, an armistice would follow, and negotiations on the basis of separation. If both should decline, then Lord Palmerston assumed that they would acknowledge the independence of the South.

The next day Mr. Gladstone replied. He was glad to learn what the Prime Minister had told him, and for two reasons especially he desired that the proceedings should be prompt. The first was, the rapid progress of the Southern army, and the extension of the area of Southern feeling. The second was, the risk of violent impatience in the cotton towns of Lancashire, such as would prejudice the dignity and disinterestedness of the professed mediation.

On 17 September, Russell, to a letter from Palmerston, three days earlier, had replied, saying explicitly, "I agree with you that the time is come for offering mediation to the United States Government, with a view to the recognition of the independence of the Confederates. I agree further that, in case of failure, we ought ourselves to recognize the Southern States, as an independent State." (Spencer Walpole's *Life of Lord John Russell*, vol. ii, p. 349.) So far, then, had the two heads of the Government advanced, when Mr. Gladstone went to Newcastle. (Morley, vol. ii, pp. 76, 77.)

The world now knows that the Chancellor of the Exchequer, at Newcastle, had it in mind that the Cabinet would shortly act in the direction of acknowledging the independence of the Southern Con-

lic opinion of this country is unanimous upon that subject. (No!) Well, almost unanimous. . . . I do not think

federacy. It is idle, therefore, to argue that this mental attitude did not signify the existence of an animus in the Ministry unfriendly to the United States.

Yet Mr. Gladstone later undertook to prove that he did not, and could not, have entertained any such animus. When he learned that his Newcastle utterances were cited in the American Case, he "prepared a lengthened statement," to show that his "animus" was otherwise than as charged. This statement he proposed should be presented to the Arbitrators. He naïvely tells us, in a fragment of autobiography, from which the preceding facts are taken, that his colleagues "objected so largely to the proceeding that I desisted." What a curious spectacle it would have been had Mr. Gladstone undertaken to explain to the Tribunal at Geneva that public speeches encouraging the Confederates were uttered by him without a particle of unfriendly feeling towards the United States! Mr. Gladstone in his apology continues — it was written in July, 1896 — "In this I think they probably were wrong. I addressed my paper to the American Minister for the information of his Government, and Mr. Secretary Fish gave me, so far as intention was concerned, a very handsome acquittal." Morley, vol. ii, p. 82.

A manly acknowledgment of error deserves at all times admiration. We are not disposed in the least to withhold credit from the English statesman for his words of reparation. He frankly admits that his speech was "an undoubted error, the most singular and palpable, I may add the least excusable, of them all. . . . Strange to say, this declaration [that Jefferson Davis had made a Nation, etc.], most unwarrantable to be made by a Minister of the Crown, with no authority other than his own, was not due to any feeling of partisanship for the South, or hostility to the North. . . . I really, though most strangely, believed that it was an act of friendliness to all America to recognize that the struggle was virtually at an end [October, 1862]. [Lord Palmerston desired the severance as a diminution of a dangerous power, but prudently held his tongue.] . . . I did not perceive the gross impropriety of such an utterance from a cabinet minister of a power allied in blood and language, and

there is any real or serious ground for doubt as to the issue of this contest." [1]

The English press were continually uttering similar sentiments. The *Economist*, of 29th June, 1861, in an article entitled "Is the Success of the North Possible," said that

"the irritation of the Americans was caused by their secret conviction that most Englishmen in their hearts believed that secession cannot be prevented, and that

bound to loyal neutrality; the case being further exaggerated by the fact that we were already, so to speak, under indictment before the world for not (as was alleged) having strictly enforced the laws of neutrality in the matter of the cruisers."

The terms of this confession are indeed humiliating, for the distinguished statesman goes so far as to say, "It illustrates vividly that incapacity which my mind so long retained, and perhaps still exhibits, an incapacity of viewing subjects all round, in their extraneous as well as in their internal properties, and thereby of knowing when to be silent and when to speak."

With the psychology of the recantation, interesting though it be, we at present have small concern. What the reader is asked to keep in mind is the fact that the British Government entertained no sentiments of genuine friendship for the United States in their time of trouble; but, on the contrary, were much in sympathy with the cause of the Southern Confederacy. That Mr. Gladstone is pleased to make an introspection of the workings of his mind, and that he is thus enabled to assure us that his memory helps him out in sustaining a later theory of altruism of motive, is really of no great consequence. The words uttered by him upon a very important public occasion (and supplemented by like deliverances elsewhere) stand as furnishing in part the proof that the United States was justified in complaining at Geneva of the unfriendly purpose of Great Britain.

[1] *Gen. Arb.*, vol. i, p. 43.

dissolution of the Union is an inevitable and accomplished fact. . . . Now, though they have not the faintest right or reason to be angry with us for entertaining the conviction they attribute to us, they are quite correct in supposing that we do entertain it. We *do* believe secession of the slave States to be a *fait accompli*, — a completed and irreversible transaction."

The *Saturday Review* of 6th July, 1861, said: —

"The Americans of the North can hardly reconquer the South. They can assuredly not retain it in subjection or in union, and they will be stronger and safer without it."

In 1887, after excitement had subsided, and the two countries had begun to estimate each other fairly, the Chief Justice of England (Lord Coleridge) had this to say of the period of the war. He was delivering an address at Exeter, in memory of his intimate friend, Sir Stafford Northcote (Earl of Iddesleigh):

"There was a time when, in the great American civil war, the sympathies of the English upper classes went with slavery, and when the North had scant justice and no mercy at their hands. I have myself seen that most distinguished man, Charles Francis Adams, subjected in society to treatment which, if he had resented it, might have seriously imperilled the relations of the two countries; and which nothing but the wonderful self-command of a very strong man, and his resolute determination to stifle all personal feeling, and to consider himself only as the Minister of a great country, enabled him to treat, as he did, with mute disdain. But in this critical state of things in and out of Parliament Mr. Disraeli and Sir

Stafford Northcote on one side, and the Duke of Argyll and Sir George Cornewall Lewis on the other, mainly contributed to keep this country neutral, and to save us from the ruinous mistake of taking part with the South. . . . I do not know, but I imagine that it was his strong sympathy with the Federal cause, and his sense of the reparation we owed to America, which led him to place his great abilities at the service of his country as one of the Commissioners of the Treaty of Washington, though the Treaty was negotiated by a Government to which he was politically opposed." [1]

The question may be asked, why, during the great struggle to maintain the Union, should the aristocracy of England and her governing classes have sympathized with the South? What was the reason that these people, with few exceptions, entertained unfriendly and even hostile feelings towards the North?

To attempt to answer this enquiry is to enter a field where lurks many a possibility of mistake. Let me venture, however, to bring forward a suggestion or two that point toward a cause which apparently will yield an explanation. Of course, the true reasons were best known to Englishmen themselves; nor am I aware that they have been advanced any-

[1] *Macmillan's Magazine*, January, 1888. The topic of the intense feeling of hostility in England receives virile treatment at the hands of Mr. Charles Francis Adams, in his admirable chapter, "The Treaty of Washington" (*Lee at Appomattox and other papers*), pp. 62–66; 75–77. See also James G. Blaine: *Twenty Years of Congress*, vol. ii, chap. 20.

where by writers qualified to speak authoritatively on the subject.

First, it is to be remembered that a feeling of animosity against England by no means slight had long existed in the northern part of the United States, especially in New England, and in those Western States that had been peopled by New England emigrants. This feeling, originating in the War for Independence, had been intensified by the War of 1812. Gradually it became allayed, but did not wholly disappear. It lingered in the seaport towns of New England down to a period immediately before the war for the Union began. The existence of such a feeling on this side of the water must necessarily have had its effect upon Englishmen. It seems likely that the best-educated classes in England were not insensible to the presence of an estrangement between the two peoples, traditionally kept alive, though restrained usually from any marked manifestation.

I am not aware that this feeling was less active at the South than within the borders of New England; but the moment that the Southern States seceded a substantial change took place, in the minds of leading men of the South, in respect to Great Britain. Nor is the fact surprising.

The South had been brought into closer relations with England because of the exportation of cotton. The idea of secession, let us remember, was of no sudden growth. For years the step had been con-

templated. It would seem as if the process was meanwhile going on of viewing with a degree of friendliness the attitude that England was likely some day to assume, based upon her need of keeping up a steady supply of cotton for her manufactories.[1]

Another circumstance may be taken into account as having exerted an influence in the direction of bringing the South and England into sympathy. While a portion of the English people viewed the institution of slavery with abhorrence, there were not a few leading men who recognized in that institution what they considered as perhaps the best working system available for growing cotton, and furnishing it to the English market. The relation of master and slave had an effect to sustain at the South a class of gentlemen, superior in birth and education and attainments to the poor whites, who owned no slaves. The line of demarcation socially between the governing classes and those who did not take a hand in public affairs was easily discernible in the slaveholding States. In this respect the South and England resembled each other. Some

[1] When Mason was sent to London, in the autumn of 1862, he was instructed among other things to say that "the English people had a deep political and commercial interest in the establishment of the Confederacy because the latter would not be a rival, but a customer, of the manufacturing and commercial nations — that it would favor free trade, prevent the United States from any longer controlling the cotton supply, and end the former Southern desire to seek protection and balance of power by the annexation of contiguous territory." James Morton Callahan: *The Diplomatic History of the Southern Confederacy* (1901), p. 133.

members of the English aristocracy were of the opinion that the only gentlemen to be found in the United States were of Southern birth and breeding. The reader may recall what Mr. Lowell has told us, in his essay entitled "On a Certain Condescension in Foreigners":—

"During our Civil War an English gentleman, of the highest description, was kind enough to call upon me, mainly, as it seemed, to inform me how entirely he sympathized with the Confederates, and how sure he felt that we could never subdue them, — 'they were the *gentlemen* of the country, you know.'"[1]

This conviction pervading the mind of the English aristocracy may have brought results the extent of which at first sight would hardly be suspected.

When men, cherishing such a feeling of the innate superiority of themselves and of a kindred race across the Atlantic to people around them, beheld a conflict actually arising between their own class (numerically not strong) and a great population where equality prevailed, and where social distinction had been less rigidly fixed for generations, it followed naturally enough that they lent their sympathies to the weaker party.

Nor is there to be left out of the reckoning the further circumstance that, when the Colonies were first peopled, a larger number of the sons of English noblemen came to the South, and settled there, than could be found in New England, or in what are now

[1] *My Study Windows* (1875), p. 72.

the Middle States. There may thus have been handed down from father to son a certain kindliness of sentiment toward old England, which kept alive a spark that in later years was capable of quickening into flame. Even the Revolutionary era did not witness the total extinction of such a sentiment in the South. I am inclined to think, however, that not very much weight can be assigned to the presence of an influence thus originated.

Finally, in our efforts to trace to their source the feelings entertained by so many Englishmen of high character toward the Southern Confederacy, fighting, as these Englishmen supposed, for rights that they could no longer enjoy in the Union, we are not to overlook the significant fact of the complete ignorance that prevailed in these circles regarding the true situation of affairs in America.

Leslie Stephen, a friend of the cause of the Union, visited the United States during the war. He was an intensely interested observer. At a later day he writes:—

"Assuming that Englishmen had really understood the nature of the quarrel, I should feel ashamed of my country. Of course, I know they did n't, but it is of no use trying to drive that into Americans." [1]

While the *Trent* affair was flagrant, John Bright in a letter (from Rochdale) to Charles Sumner (20 November, 1861) observes:—

"It is incredible, almost, how densely ignorant even

[1] *Life and Letters of Leslie Stephen* (1906), p. 122.

our middle and upper class is with regard to your position. The sympathies of the great body of the people here are, I think, quite right, although some papers supposed to be read by them are quite wrong." [1]

These various suggestions, if they do not furnish the true reason, at least point in the direction where it is likely that the true reason shall be found to exist.

The discussion leaves out of sight the consideration of a motive attributable perhaps here and there to an individual Englishman, a motive which we hope is not justly chargeable to members generally of the governing classes, — namely, a spirit of jealousy which a people is apt to harbor against a successful rival. England, it is evident, had been, and was likely to continue to be to a certain extent, jealous of the material success of the United States. It is best, however, to be careful not to assign much influence to the workings of this unworthy yet perfectly natural impulse. It is possible that the widespread interest evinced by the upper classes of England in the success of the Confederacy is to be accounted for only in a moderate degree by the presence of so mercenary a motive.

No weightier testimony upon the question of fact can be cited than that of Captain James D. Bullock, who, from his position as a naval representative of the Confederate States in Europe, had ample opportunity to test public feeling in England. He says: —

[1] James Ford Rhodes: *History of the United States*, vol. iii, p. 508, citing Pierce, *Sumner Papers*.

"My own personal observation, confirmed by the testimony of every other Agent of the Confederate Government whose duties compelled him to reside in England during the Civil War, convinced me that the great majority of people in Great Britain — at least among the classes a traveller, or a man of business, or a frequenter of the clubs would be likely to meet — were on the Southern side. Circumstances threw me a good deal with army and navy men, and I can affirm that I never met one of either service who did not warmly sympathise with the South."[1]

Lord Granville writes to Lord John Russell, 27 September, 1862, on the subject of a possible offer to mediate, and says it is premature to depart from the policy adopted by Russell and Palmerston, "which notwithstanding the strong antipathy to the North, the strong sympathy with the South, and the passionate wish to have cotton, has met with such general approval from Parliament, the press, and the public."[2]

At the head of our list of grievances we put the conduct of the Ministry. We charged them with unduly hastening to recognize the belligerency of the seceded States. Her Majesty's Government, we complained, had acted upon imperfect information.

[1] *The Secret Service of the Confederate States in Europe*, vol. ii, p. 303. The author brings forward a theory that English sympathy at first was in favor of the North, because of slavery, but that the conduct of the Northern leaders was such that the sympathy was, upon the breaking-out of the war, transferred to the South.

[2] *Ibid.*

Without even waiting forty-eight hours for the new Minister to arrive, but with a haste that was most unbecoming, they issued a proclamation of neutrality which, so we contended, could but prove of the greatest encouragement to the Confederacy.[1]

[1] Mr. Charles Francis Adams, the new Minister to England, arrived on the *Niagara* at Queenstown on the 12th of May, 1861. The news was telegraphed to London. He reached London on the 13th. The morning newspapers of the 14th printed the Queen's Proclamation. The news of this action reached the United States only to cause deep and widespread irritation. People did not stop to reflect that England had a perfect right to issue the proclamation just as soon as she saw fit; or that our instituting a blockade, and exercising other rights of a belligerent, made it needful that other powers should warn their people by proclamation. Americans hardly deigned to reason about the precipitancy, as they termed it, of a Government that they felt sure wished them no good. The profound impression made by this act on the part of the Government of Great Britain lasted for a great many years; and even now there are those who refuse to see in it aught else than proof of an unfriendly feeling.

Mr. Charles Francis Adams (son of the Minister), in his *Treaty of Washington*, quotes from a private letter, 18 May, 1869, from Hamilton Fish to his friend S. B. Ruggles, of New York, in which occurs this significant statement (the italics are mine). Of England, Mr. Fish writes: "We have held she was precipitate; much may well be said on this side. *She had promised to await Mr. Adams's arrival*, but anticipated it, and of course any information or explanation he might make." *Lee at Appomattox, etc.*, p. 207. Mr. Fish doubtless had in mind the account in a letter to Mr. Seward, 2 May, 1861, of the interview between our outgoing Minister, Mr. Dallas, and Lord John Russell, on 1 May at the latter's private residence. Lord John, who had asked Mr. Dallas to call there, told of the presence in London of the three representatives of the Southern Confederacy (Messrs. Yancey, Mann, and Rost), that he had not seen them, but was willing to do so unofficially; that the

The well-settled conviction on the part of the people of the Union States that, in that dark hour, the Government of Great Britain displayed an unfriendly feeling toward them, has been made a sub-

Government had an understanding with France, which would lead them to take the same course as to recognition. Lord John also referred to the rumor of a meditated blockade of Southern ports, and their discontinuance as ports of entry.

Mr. Dallas had heard nothing with regard to these topics, and he prudently refrained from discussing them. "But as I informed him," says Mr. Dallas, "that Mr. Adams had apprised me of his intention to be on his way hither, in the steamship *Niagara*, which left Boston on the 1st of May, and that he would probably arrive in less than two weeks, by the 12th or 15th instant, his Lordship acquiesced in the expediency of disregarding mere rumor, and waiting the full knowledge to be brought by my successor." *Correspondence concerning Claims against Great Britain*, vol. i, p. 34.

John Bright said in the House of Commons, in March, 1865: "The proper course to have taken would have been to wait until Mr. Adams arrived here, and to have discussed the matter with him in a friendly manner, explaining the ground upon which the English Government had felt themselves bound to issue that proclamation, and representing that it was not done in any manner as an unfriendly act toward the United States Government. . . . It was done with unfriendly haste and had this effect: that it gave comfort and courage to the conspiracy at Montgomery and at Richmond, and caused great grief and irritation among that portion of the people of America most strongly desirous of maintaining amicable and friendly relations between their country and England." *Gen. Arb.*, vol. i, p. 30.

It was certainly unfortunate that the proclamation could not have been delayed at least forty-eight hours. But now that we can look with clearer vision into the facts, we are bound to believe that we exaggerated the idea of hostile intention, if indeed it existed at all. Mr. Forster, than whom there was no better friend of the United States, says that the proclamation was not made with unfriendly *animus*. The truth of this statement Mr. Forster

ject of examination here, in order that one may correctly apprehend why a charge to this effect occupies a conspicuous place in the American Case. The United States, let it be understood, was not asking that Great Britain be required to pay money as damages for having maintained an unfriendly, if not a hostile, attitude. Public sentiment, especially that prevailing in quarters likely to influence British officials, had to be taken into account in a determination of the question of how far these officials had tried in good faith to see to it vigilantly that Great Britain observed her duty as a neutral. As to

vouches, speaking "from personal recollection and knowledge." *Forster to Sumner*, 17 July, 1869. Reid: *Life of Forster*, vol. ii, p. 21.

Thomas Hughes told a great audience in the Music Hall, Boston, 11 October, 1870, that the views which we held during the war of the unfriendly purpose of the Ministry in hastily putting forth the proclamation were incorrect. He said: "If the publication of the proclamation was a mistake, it was made by our Government at the earnest solicitation of Mr. Forster, and other warm friends of yours, who pressed it forward entirely as they supposed in your interest." *Vacation Rambles*, 1895, p. 398.

No more trustworthy description of the feelings of the several classes in England toward the United States at that period can be found than in this frank and manly talk from one who, in addition to being well qualified to speak, had always proved himself to be a devoted friend of the United States. The candor and the temperate tone of this address must have produced an excellent effect upon his audience. No Englishman stood higher in the esteem of the American people than Thomas Hughes. It is a happy circumstance that parting words from him should have dealt with this topic; and it is a pleasure to realize that these brave and generous utterances helped not a little in bringing about a closer intimacy in thought and feeling between the two great English-speaking nations.

what *animus* inspired the British Government at that period no enlightenment was needed by the American Arbitrator; but it was important that the neutral Arbitrators be advised of the feeling in England towards the loyal and the seceding States respectively. Public sentiment entered as a factor, and proof of it constituted a part of the testimony, throwing light upon what was done, and what was omitted, in respect to the building, equipping, and sailing of the Confederate cruisers.

Mr. Sumner had insisted that the Queen's Proclamation fixed the liability of Great Britain. The President, under the judicious advice of his Secretary of State, conceived that the act itself might be referred to in the formulation of our demands, not as carrying with it an obligation to repair damages growing out of the prolongation of the war, but as showing an *animus*, and as such bearing directly upon the question of responsibility for the escape of the *Alabama*.[1]

[1] The following extract from the London *Saturday Review* of 18 January, 1868, is pertinent as outlining grounds upon which proof of an unfriendly spirit can be rested: "This hasty recognition of the South was practically connected with the fitting-out of the *Alabama*. It instilled the belief into shipbuilders that the British Government would proceed very calmly in interrupting their operations on behalf of the South. Nine tenths of the Conservative party, and a large section of the adherents of the Ministry, were zealous partisans of the Confederates, and the escape of the *Alabama* may be in a great measure attributed to the fact that the majority of the English saw nothing very much to regret in her escaping." Reprinted in *Littell's Living Age*, vol. xcvi, p. 562.

Occasionally one comes across a mention of the existence of this state of feeling by English writers of a recent date, as witness the following extract from the biography of an English statesman, who from first to last showed himself to be a true friend of America:—

"The tone of undisguised hostility to the North which had been adopted during the war by nearly every politician of eminence in this country, save Mr. Bright, Mr. Cobden, and Mr. Forster, was bearing its natural fruit."[1]

A single quotation from an official document discloses the spirit that dominated Lord John Russell, in his dealings with foreign affairs relating to America. When charged with want of due diligence, Earl Russell said:—

"The law officers of the Crown must be held to be better interpreters of a British statute than any foreign Government. Her Majesty's Government must, therefore, decline either to make reparation and compensation for the captures made by the *Alabama*, or to refer the question to any foreign State."[2]

And yet, after the award had been made at Geneva, the Duke of Argyll, writing to Lord Russell (5 December, 1872), in reply to Lord John's complaints of what had been done by the Tribunal of Arbitration, said:—

"I must remind you that *our* conduct, when you were

[1] Reid: *Life of Forster* (1888), vol. ii, p. 8.

[2] *Correspondence concerning Claims against Great Britain*, iii, 562.

Foreign Minister, was not unanimously considered by ourselves so certainly right as you would now hold it to be.

"Let me call to your recollection one circumstance, of which I have a vivid recollection.

"You and I had a conversation one day about the 'escape' of the *Alabama* or the *Florida* (I forget which), and I urged on you that, although she had fraudulently escaped when you had meant to seize her, that was no reason why we should not detain her if she touched at any of our ports. You agreed with me in this view; and you drew up a despatch directing the Colonial authorities to detain her if she came into their power.

"If this order had gone forth, one great plea of the Americans could never have been urged against us; and the American claims would perhaps have never been made at all.

"But what happened? When you brought it before the Cabinet there was a perfect insurrection. Everybody but you and I were against the proposed step. Bethell was vehement against its '*legality*,' and you gave it up.

"Well, now I keep to the opinion that you and I were *right*, that the action *ought to have been taken*, and that the Cabinet was wrong.

"The correlative of this opinion is that America *had* reason and right in complaining that the *Alabama* was received in all our ports, and that so far we were in the wrong." [1]

At a later period, this eminent statesman, reflecting that even the British Arbitrator had found Great Britain responsible, came forward, and in a manly

[1] Walpole: *Life of Lord John Russell*, vol. ii, p. 355.

spirit took upon himself the blame. These are his words: —

"I assent entirely to the opinions of the Lord Chief Justice of England that the *Alabama* ought to have been detained during the four days in which I was waiting for the opinion of the law officers. But I think that the fault was not that of the Commissioners of Customs; it was my fault as Secretary of State for Foreign Affairs." [1]

The country owes a debt of gratitude to President Lincoln for the wisdom with which he corrected the despatch, prepared by Mr. Seward, at the time of the *Trent* affair. It is interesting to learn from a recently published life of Lord Granville that the despatch prepared at this crisis by Lord John Russell was in like manner by another hand modified and toned down.[2]

Of late years more than one American writer has asserted that our statesmen and our people were during war times led into error in supposing that the British Government were really in sympathy with the cause of secession. We may concede that in public affairs of magnitude it is sometimes dangerous to pass judgment upon the supposed motives of political leaders. It is only fair that we should listen attentively to what has been said in the pre-

[1] *Recollections and Suggestions*, p. 334.

[2] *Life of Lord Granville*, vol. 1, p. 402. A lady who was living in London, not long after the war, and who met Lord John Russell in society, has told me that she had more than once heard him speak of the United States in terms of bitter dislike.

mises by way of a defence of the British Ministers. It is summed up nowhere better, perhaps, than in a recent article on the subject of the Confederate cruisers, by the late Goldwin Smith, whose views upon English politics are always entitled to great respect. He says:—

"I have lived a good deal with those who could not fail to be well informed, and my conviction is that the British Government resolved at the outset on a strict neutrality, and firmly adhered to that resolution to the end, notwithstanding the intrigues of the Confederate envoys and the solicitation of the Emperor of the French. If Gladstone thought that the North had better let the South go, looking forward by way of compensation to the entrance of Canada into the Union, it by no means follows that he voted in the Cabinet for a recognition of the Confederacy or actual intervention of any kind. I feel pretty sure that he did not."[1]

What is here said may without question be accepted as expressing the honest conviction of an acute and broad-minded observer. In a certain sense one may agree with Goldwin Smith. But his statement does not prove that the American people were mistaken. The belief they entertained was that, however closely the Ministry may have adhered to the strict line of duty (and there were instances where they did all that could be asked for), a majority of the Cabinet privately cherished a hope for the success of the Confederacy, a state

[1] *Independent* (New York), April 10, 1902.

of mind that could not but influence them in their administration of public affairs. This belief, upon a calm review of the series of events that led to the escape of the cruisers, will be sustained, particularly when studied in the light of information that may be gathered from various sources, including private conversations with persons who had lived where they could know what the actors in those events thought and desired. In a word, had the British Cabinet earnestly wished that the South should not get any help whatever in Great Britain or her colonies, no *Alabama* would have burned upon the high seas ship after ship of merchants of the United States.

Our Government was at all times fairly well advised of the state of feeling prevailing in England; and it strained every nerve to keep our people from insisting on retaliation. The signs of unfriendliness to us (some of which we have mentioned) were a matter of daily public observation; and yet, so far as America could discover, not a hand was lifted by a British official to put a stop to what was going on.

Mr. Dudley, our Consul at Liverpool, displayed a most commendable vigilance and activity in his efforts to keep Washington supplied with correct reports. Nor could any one have exhibited more promptitude, coupled with a quality of discretion and self-restraint of the highest order, than our Minister, Charles Francis Adams. Yet matters went on from bad to worse. No wonder that Americans entertained the conviction that at heart Eng-

land, in sympathy with the private feelings of her Ministers, was to a large extent imbued with a spirit hostile to the permanence of this Republic.

The assertion here made is not that every individual Englishman, in those dark hours, wished us ill. Far from it. Throughout the contest we were cheered by brave words from Bright and from Forster, from Cobden and Stuart Mill, and from other generous-minded public men. We did not lack friends in the British press; nor had we to wait long to realize that the great body of the middle class was heartily with us. The cotton-spinners of the North of England, though sorely tried, deprived as they were of the staple product from which they earned their living, rejoiced almost to a man in the progress of the Union arms. At length, when the world began to see that our triumph meant the wiping-out of slavery, we were encouraged at discerning a change in public sentiment in England. We more and more heard words outspoken in defence of the cause of the United States.

Surely enough has been cited by way of proof that the people of the United States in their time of need had good reason to complain of the exhibition by the British Government of an unfriendly feeling towards the cause of the Union. That feeling produced an effect that endured long after the war had closed. An author, writing the biography of one of England's worthiest statesmen, whose book, published as late as 1905, has this to say of Englishmen

who opposed the submission of the *Alabama* Claims to arbitration: —

"A proud nation, still largely imbued with the traditions of the days of Lord Palmerston, and with influential classes still animated by an unreasonable and bitter dislike of the United States, consented but unwillingly to be dragged before an international tribunal without precedent in the history of nations, and under circumstances in which, on the main issue at least, the judgment was certain to be adverse. The biographer of Lord Russell claims, and correctly claims, that the voice of the nation in June, 1872, was with him rather than with Mr. Gladstone and Lord Granville."[1]

If these people, as late as 1872, cherished a spirit of animosity — how friendly could they have been in 1861? The good feeling that happily exists between the two countries to-day almost makes it seem ungracious to go back to that period when the United States was disliked, and so was treated in an unfriendly manner. But one must abide by "the truth of history." The American people can forgive and forget; can make all due allowance for misunderstandings, but they cannot blind themselves to that which is so plainly to be seen; or, whatever be later-day protestations from kindly disposed commentators, consent to have it go upon record that the unfriendliness, of which they once experienced the grievous results, had in reality no existence.

[1] Fitzmaurice: *Life of Earl Granville*, vol. ii, p. 107; citing Spencer Walpole: *Life of Lord John Russell*, vol. ii, p. 365.

## CHAPTER III

### THE ALABAMA CLAIMS — THE TREATY OF WASHINGTON

THE notoriety gained by the *Alabama*, under the command of Captain Raphael Semmes, won for her the honor (or as Count Sclopis puts it, "the unenviable privilege") of bestowing the name of "*Alabama* Claims" upon all claims preferred by citizens of the United States for depredations committed on the high seas by Confederate cruisers generally. The building and equipping of this formidable ship, manned as she was largely by Englishmen, together with the flagrant circumstances of her escape, 29 July, 1862, from Liverpool, are facts that we can assume to be perfectly familiar to the reader.

From time to time, as news arrived of the plunder and the burning by the *Alabama* of one ship after another, our merchants became incensed beyond measure; and there was not a soldier at the front, nor a sailor on blockade, whose wrath was not kindled against the English Government. Other cruisers were sent afloat, the responsibility of whose career of destruction, it was fully believed, should be laid at England's door. This Confederate Navy, of English origin, holds a prominent place in the foreground

of the picture of those historic times. It accomplished its work swiftly and surely. The commerce of the United States was almost totally wiped out of existence.

Irritation and anger increased apace when our people saw England rapidly gaining the greater part of the carrying-trade which we had lost; and lost, too, as we conceived, directly through her wrongdoing. Destruction so great in amount had inflicted an injury too serious to be tamely submitted to, or to be deemed capable of easy reparation. Merchants whose ships had been burned, or who had owned cargoes which never reached port, sea captains and sailors, as well as insurers, constituted a class that daily pressed upon the Government their complaints for damages.[1] The sufferer talked of his wrongs to his friends and neighbors; and thus was extended and intensified a demand for redress already strenuous. The claims growing out of these depredations had become a stern legacy of the war. So long as the reclamations continued to be unadjusted, they kept alive and fomented an irritation between the two great maritime powers of the world, which, as

[1] The first memorial entered upon the files of the Department of State was that of the owners of the *Harvey Birch*, burned by the *Nashville*, 16 November, 1861. Copies of the papers were sent to Mr. Adams and by him transmitted to Earl Russell with a letter asking for redress. These demands were sent singly in each case for a while. At last as new losses were incurred the facts were brought to the notice of the English without description, which was by consent deferred.

already stated, threatened, at more than one critical moment, to end in war.

This much has been said of the origin of the "*Alabama* Claims" in order that the reader may gain some conception of the gravity of the task that was presented when public men on either side of the Atlantic, deploring the situation and anxious for peace, sought to venture upon taking the preliminary steps to effect a settlement such as might allay further irritation and command the approval of both peoples.

When, in March, 1869, General Grant assumed office as President of the United States, he found the question of the "*Alabama* Claims" at the height of its disturbing influence. Hamilton Fish of New York reluctantly accepted the position of Secretary of State. Upon Mr. Fish rested the responsibility of dealing with this serious problem. As might have been foreseen, the subject already had provoked on either side of the Atlantic many a heated public discussion. Four years had gone by, leaving no visible sign of progress toward a settlement. Moreover, there were those — not few in number — who, seeing behind this question the spectre of war, refused to believe that a peaceful way could possibly be contrived out of the danger.[1]

[1] Mr. Pierce, in his *Life of Sumner* (vol. iv, p. 269), is authority for the statement that Sir Frederick Bruce, then Minister at Washington, at a dinner-party near Christmas, 1865, said to Mr. Sumner

In the summer of 1868 Mr. Reverdy Johnson of Maryland had succeeded Mr. Adams as our Minister to England. He had long borne the reputation of being one of the ablest lawyers in the Union. He

that England would fight before she would pay a dollar, or consent to arbitration. The Portuguese precedent had settled opinion in England; until that was answered the United States had no case.

The reader is referred to an article in the *Law Magazine* (London) for November, 1874, "International Courts of Arbitration," by Thomas Balch, afterwards printed in pamphlet form in this country and reprinted in 1899, at Philadelphia. He will find therein notes of an interview between the author and President Lincoln, that took place in November, 1864, at which the former suggested an arbitration court for the settlement of our troubles with England. Mr. Lincoln said: "Start your idea. It may make its way in time, as it is a good one." The next month, on arriving at London, Mr. Balch broached the subject to friends, but nobody gave it encouragement except Mr. Cobden.

Mr. Balch, a member of the Philadelphia Bar, then temporarily residing at Paris, had sent to the New York *Tribune* a letter, printed 13 May, 1865, in which he recommended a plan of arbitration, almost identical with that adopted, six years later, in the Treaty of Washington. Professor James Lorimer (1818–1890), holding the chair of Public Law and of the Law of Nations in the University of Edinburgh, styled this letter "a very remarkable anticipation of the Treaty." *The Alabama Arbitration*, by Thomas Willing Balch (Philadelphia, 1900), p. 49.

The latter writer (a son of Thomas Balch) has treated of the march of great events leading up to the proceedings at Geneva, in this valuable little book — a preliminary study, it is understood, to a larger work on international arbitration, now in preparation. A note, at page 5, is well worth appending here: —

"The *Alabama* was known as the '290,' because she was the two hundred and ninetieth vessel that the Lairds built. It is a curious coincidence that when, a few years since, Mr. Herbert, then Secretary of the Navy of the United States, was to name one of the great

had been popular with his recent associates in the Senate. This mission was his first experience in a diplomatic capacity. Always sanguine, Secretary Seward was ambitious to gain before retiring from office the credit of getting these troublesome claims out of the way. The newly appointed Minister, animated by like hopes, met Lord Clarendon, and entered with him upon the conduct of negotiations to such speedy purpose that on 14th January, 1869, an agreement was signed, known as the Johnson-Clarendon Convention. This Convention put forward our demands as private claims only, susceptible of being set off, at least in part, by claims of British citizens against us, growing out of the operations of the war. All claims for national injury had disappeared. Nor was there a word of regret for what we had suffered at the hands of England.

President Johnson promptly sent the Convention to the Senate. As soon as the terms of this instrument became public, it was apparent to everybody that neither Secretary Seward nor our representative at St. James's had understood the temper of the American people. When, in April, the proposed Treaty came to the test of ratification, but one solitary vote was cast in its favor.[1]

battleships building at Philadelphia by the Cramps, he called her after his native state, the *Alabama*, and she, too, though quite unknown to the Secretary, was the two hundred and ninetieth ship that the Cramps built, and was recorded in their book as 'No. 290.'"

[1] By Thomas Clay McCreery, of Kentucky.

The Chairman of the Committee on Foreign Relations of the Senate at that time was Charles Sumner (1811–1874) of Massachusetts, who had held the position for eight years. In executive session Mr. Sumner delivered a long and elaborate speech in condemnation of the Treaty. No speech was necessary. The Treaty was doomed; but Mr. Sumner could not keep silent. Later, the seal of secrecy being removed, copies of what was known as "Mr. Sumner's great speech" were spread broadcast over the country. It was a startling indictment. In fervent, not to say extravagant, rhetoric, it charged the British Government with precipitancy in recognizing the belligerent rights of the Confederate States; with negligently allowing a ship to escape that had been built, manned, and equipped in England, and further with giving her hospitality and supplies in British ports. "Thus," exclaimed the Senator, "her depredations and burnings, making the ocean blaze, all proceeded from England, which by three different acts lighted the torch. To England must be traced the widespread consequences which ensued." [1]

This much, allowing for oratorical ardor, might well enough, from one point of view, have been put forward. But Sumner went further. He assessed the damages at an enormous figure. Besides fifteen million dollars for vessels destroyed, he set the loss to the carrying trade at one hundred and ten mil-

[1] *Mr. Fish and the Alabama Claims*, p. 111.

lion dollars, and then went on to compute the national losses, caused by the prolongation of the war. The Senator held England responsible for the duration of the conflict, — "through British intervention the war was doubled in duration." He named four thousand million dollars ($4,000,000,000) as the cost of suppressing the rebellion. "Everybody can make the calculation."[1]

The student of the diplomatic history of the United States will find few chapters more interesting or profitable than that which deals with the conduct and bearing of Charles Sumner in his treatment of the "*Alabama* Claims," from the close of the war down to the proclaiming, in 1871, of the Treaty of Washington. Mr. Sumner knew England. For years he had been on terms of friendly correspondence with more than one of her foremost public men. From personal interviews, and from frequent letters, he had been able to possess himself of a store of information which was of special value to him in the process of arriving at correct views of our foreign affairs in respect to Great Britain. The position of Chairman of the Committee on Foreign Relations of the Senate, it need not be added, was thoroughly to his taste. Preëminently a student, Mr. Sumner was well equipped, so far as the literature of diplomacy was concerned. But the Massachusetts Senator, it must be confessed, knew little of the art of getting along with other men. His want of tact was

[1] *Sumner's Works*, vol. xiii.

conspicuous. Moreover, Mr. Sumner's demeanor was not always such as to win him friends. He was overbearing. He was intolerant of views that differed from his own, even though expressed by an intimate companion. Those who knew him well discovered that he could prove quite as tenacious of his own opinion as he was lacking in the qualities of constructive statesmanship. Mr. Sumner, although a profound student of the law, was never a lawyer.[1]

The subject of the "*Alabama* Claims" he had approached, as he did most other subjects, from the standpoint of the student, and not from that of the man-of-affairs. High-minded and of lofty integrity, an intense lover of his country, this earnest scholar in politics would on a moral issue stir the multitude as few other orators could; but he was completely out of place as a leader in a campaign such as this,

[1] A story of Sumner, at the Harvard Law School, used to be floating around the school when, a generation later, I was a student there. It seems that Sumner was Librarian of the Law School, between 1831 and 1833. One day, while he and two or three other young students were in the library, the sound reached them of footsteps in the hall. Sumner said to his companions: "That's Ashmun coming; wait, and you'll see that I get a compliment out of him." (John Hooker Ashmun, Harvard, 1818, was a man of extraordinary gifts. He was of such brilliant promise that, in 1829, when not thirty years old, he filled admirably the chair of Royall Professor of Law. This professorship he held until his death, in 1833.) It was Ashmun, who asked, upon entering, "Well, Sumner, how are you to-day?" "In the best of health," replied the librarian, "but, Professor Ashmun, really do you know sometimes I more than half suspect that I'll never make a lawyer." "No, by G——, you never will," was the unexpected rejoinder.

where a problem was pressing for solution that had vexed the keenest minds of the Union — a problem involving great pecuniary interests, and demanding of him who would deal with it a thorough knowledge of human nature, no less than a nice perception of opportunities — in a word, the highest skill of the diplomatist and the statesman.[1]

[1] The relation of Mr. Sumner to the Administration, in respect to the "*Alabama* Claims," is discussed in a valuable little book, from the pen of J. C. Bancroft Davis, published in 1893, entitled *Mr. Fish and the Alabama Claims — a Chapter in Diplomatic History.* Where any statement therein is not entirely in harmony with that brought forward by Mr. Pierce, the biographer of Sumner, I am bound to say that I have placed full faith in the accuracy of what Mr. Davis has written.

Another writer may be named who has treated this topic with marked ability, as a part of a narrative of historical events connected with the negotiation of the Treaty of Washington. Mr. Charles Francis Adams (son of our former Minister to England, the American Arbitrator) delivered before the New York Historical Society, 19 November, 1901, an address dealing with the subject of the Treaty. This address the author later expanded into "The Treaty of Washington, Before and After," which forms a substantial part of a volume entitled *Lee at Appomattox, and Other Papers.* (Boston and New York, 1902, second edition enlarged, 1903.) Mr. Adams writes with plenty of vigor. He is not at a loss for original ways of looking at historical occurrences; and he evidently has studied his subject exhaustively before reaching his conclusions. Whether agreeing with him or not, one cannot fail to admire the force and the sturdiness with which this patriotic writer, who does his own thinking, and who is an American through and through, maintains a position which he has once taken up. Occasionally he is inclined to severity in his criticisms.

Professor John Bassett Moore, of Columbia University (formerly Assistant Secretary of State), has treated the subject of the Geneva Arbitration with as much fulness as was permissible in his *History*

Of course Mr. Sumner was here taking up an extreme position. The Chairman of the Committee on Foreign Relations of the Senate, when of a like political party with the Administration, is supposed to reflect the views of the President. These utterances of the Massachusetts Senator, given to the public just as the new Administration was beginning to define its policy, were naturally everywhere regarded as indicating the stand taken by President Grant and his Secretary of State, Hamilton Fish. As a matter of fact, however, no one was more surprised than they at the deliverance of this remarkable speech. Neither the President nor the Secretary knew that such a speech was to be made.[1] Its tone heralded war, instead of turning men toward a peaceful settlement.

True, the President and the Secretary had been of the opinion that the precipitancy displayed by the British Government to recognize belligerent rights on the part of the rebels, disclosed an unfriendly purpose. But England possessed the right, as does every sovereign power, to issue a proclamation of

*and Digest of the International Arbitrations to which the United States has been a Party* (Washington, 1898), vol. I, chap. xiv. It would be superfluous to praise this gentleman's work. His treatment has the advantage of the writer's familiarity with the details of other arbitrations, and with the traditions of the Department of State. Professor Moore has condensed his material into 158 pages, with the result that the recital is excellent, both in respect to arrangement and style. The *History and Digest* deservedly takes rank as an authority of the highest value.

[1] *Mr. Fish and the Alabama Claims*, pp. 7, 8, 23.



this character to her subjects, whenever she might choose so to do. The President, whatever his opinion as to England's course, was of a determination now to act prudently, and in a manner best calculated to bring about an honorable settlement of every cause of estrangement between the two countries. He did not relish the prospect of having his hand forced. Charged with the duty of bringing about a settlement, the Administration could view with slight favor a fulmination against Great Britain of a demand mounting into enormous figures, — as a preliminary to proposing an agreement to arbitrate. "It is not necessary to waste words to prove that such a doctrine, if supported by the Administration, would have shut the door against future negotiation."[1]

At the date when this high-sounding speech was given to the world, the President, upon Mr. Sumner's request, had already decided to send Mr. John Lothrop Motley to England. The reader who recalls the circumstances of Mr. Motley's arrival at London is aware that that accomplished man-of-letters took a step in his new capacity at once unusual and unfortunate. Seeking an interview with Lord Clarendon he said, among other things, that the President, when our case should once more be presented, wished the British proclamation to be used "as being the fountain-head of the disasters which had been caused to the American people,

[1] *Mr. Fish and the Alabama Claims*, p. 7.

both individually and collectively, by the hands of Englishmen." Mr. Motley is seen to have been thoroughly committed to Mr. Sumner's extreme views; and he actually disregarded the instructions prepared with the greatest care for him at the Department of State. Not only in conversation but in writing Lord Clarendon learned from our new Minister that the demands formulated in the speech of Mr. Motley's friend, Senator Sumner, were to be taken as the measure of what the United States Government had determined to require of Great Britain. This was doing precisely what Mr. Motley had been directed not to do.

Mr. Fish, to his credit be it said, displayed a most exemplary patience. He had a great deal to contend with in the unwarranted attitude assumed by our accredited representative at London. For a while the Secretary, in the hope of averting a crisis, succeeded in restraining the hand of the President, whose impulse it was instantly to recall Mr. Motley. No further service, however, in this business was required of the Minister. The field of negotiations was transferred to Washington, but Mr. Motley continued at his post until some time in July, 1870.

From the outset the Secretary of State had kept clearly in mind the terms upon which the United States would have to take a stand. Happily, Mr. Fish was endowed with the faculty of being able to divine how, and at what time, to yield somewhat, while preserving the essentials. It is by no means a

common gift, — the intuitive perception of the limits to which one may extend the policy of surrender, and at the same time retain the confidence, and satisfy the expectations, of those whose interests are at stake. Firm of purpose, yet with the calmness and courtesy that attend high-breeding, Hamilton Fish was precisely the man to be entrusted with the task of attaining fair and honorable results from a state of international affairs exceptionally complicated, and therefore extremely dangerous.

In the summer of 1869, Sir John Rose (later a resident of London and partner in the banking-house of Morton, Rose and Company) had visited Washington for the ostensible purpose of establishing commercial arrangements between the United States and Canada. His real object, we now know, was to ascertain what might be effected in the direction of bringing to a settlement the "*Alabama* Claims." At that date Sir John was a member of the Ministry in Canada. He was well known in Washington as the Commissioner on the part of Great Britain to settle the Hudson's Bay and Puget Sound Companies' claims against the United States, under the Treaty of 1863, an office which he still held. The counsel for the United States before this Commission was Caleb Cushing, whose experience and learning in the law of nations had upon sundry occasions been put at the service of the Department of State. To the intimacy that had sprung up between Sir John Rose and the astute Cushing may be

traced much of the inspiration of the former's visit.

Alike from temperament and from experience, this newcomer upon the scene of action was well fitted for his mission. He was received by Mr. Fish in a frank and cordial manner. The two men had no difficulty in understanding each other. The fate of the Johnson-Clarendon Convention was, however, too recent in the public mind to admit of the thought that anything could be accomplished at that juncture further than to exchange expressions of personal good-will. It should be explained that in addition to the movement by Sir John Rose, conferences with a like object in view had from time to time taken place between the British Minister at Washington, Sir Edward Thornton [1] and Secretary Fish.

Meanwhile President Grant took a step designed to exercise a quickening influence upon the Ministry across the water. In his annual message of December, 1870, after informing the Congress that the British Government appeared unwilling to concede that it had been guilty of any act for which the

[1] Sir Edward Thornton (1817–1906) was a man whom it was always a pleasure to meet. He was later made one of the British High Commissioners to draft the Treaty. The departure from Washington of himself and family, a few years later, was sincerely regretted by their numerous friends. Sir Edward, in his thirteen years of residence, had almost come to be regarded as a citizen, so completely had he adapted himself to his surroundings; and yet no Minister could have served his country with a more untiring and single-hearted devotion.

United States had just cause of complaint, the President recommended the appointment of a commission to take proof of the ownership and amount of the claims of individuals; and further, that authority be given for the United States to settle the claims with the owners, so that the Government itself might hold in ownership all the private claims. Congress, however, enacted no legislation by way of carrying this proposal into effect.

This is not the place to speak of the ill-fated Santo Domingo Treaty, nor of the tide of feeling that the pendency of that measure in the Senate set in motion. A good deal was said at the time that might well have been foregone. It will be remembered that because of a misunderstanding in regard to this Treaty, the personal relations between President Grant and Senator Sumner, already strained, had become a topic of wide public comment. The season thus proving inopportune for starting negotiations between this country and England, persons upon either side of the Atlantic who anxiously desired an amicable settlement could do little more than watch the course of events, and quietly await developments. Not until the opening of the year 1871 did public affairs begin to shape themselves, so that the friendly understanding between Sir John Rose and Secretary Fish could be advanced into a condition which may be said to have taken on an official status.

On the 9th of January, 1871, Sir John Rose ar-

rived at Washington, in a confidential capacity, as the officially accredited agent of the British Government.[1]

Mr. Fish took occasion to ascertain what were the views then held by Mr. Sumner, as to what in any event should be required of England's representative. Senator Sumner, among other propositions, laid down the requirement that Great Britain should withdraw her flag from Canada; and in order "to make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands." Such a demand, it is hardly needful to declare, was utterly out of the question. When the Forty-Second Congress had begun, on the fourth of March, with the new session of the Senate, the Republican Senators, in order to secure harmony of action, removed Mr. Sumner from the chairman-

[1] *Mr. Fish and the Alabama Claims*, p. 59.

"We are taking several bites at that big cherry — reconciliation with the States. I have sent Sir John Rose to New York and Washington, to do that which it is difficult for Thornton to do without committing us. He is to go on his own commercial business. He is to have no authority, but a boast that he was intimate with me when I was in the Colonial Office. He is to ascertain from the Government and from the Opposition what chance there is of our simultaneously agreeing to some beginning of a negotiation, if it were only to assent to a Joint Commission, who, without being commissioned to settle anything, might arrange in what manner each question in discussion might be best considered. I have confidence in his tact and discretion. He knows the States, and has the confidence of Sir John Macdonald. We of course wish Rose's mission to be a *perfect secret*." Granville to Bright, 18 December, 1870; *Life of Granville*, vol. ii, p. 29.

ship of the Committee on Foreign Relations, and conferred the position upon the next ranking Senator, Simon Cameron, of Pennsylvania. This proceeding caused a stir throughout the country, and by many people at the time was greatly misunderstood.[1]

[1] Even so late as 1906, a writer of history, usually careful, asserts that "the moving spirit in the affair was Grant, and the real cause of the deposition was the share Sumner had had in the defeat of the San Domingo scheme, and the unhappy incidents that followed in its train." James Ford Rhodes: *History of the United States*, vol. vi, p. 362.

Mr. Rhodes, we think, does injustice to President Grant, who was incapable of acting upon the motives here attributed to him. Bancroft Davis, who knew the facts personally, assigns the true cause in his *Mr. Fish and the Alabama Claims* (1893). Harmony could not be maintained between the Chairman of the Committee on Foreign Relations and the Secretary of State. Who was to blame can readily be surmised by those who knew the two men. The incident that shocked Washington — Mr. Sumner's refusing to shake hands with Mr. Fish, at a dinner-party at General Schenck's — was only the culmination of a series of acts on the part of the Massachusetts Senator of an overbearing insolence, of which it is unpleasant to revive a memory.

Surely few of his contemporaries in public life better knew Charles Sumner's nature, or had larger opportunity to watch his behavior, than his sometime colleague in the Senate, the late Governor Boutwell. He says: "Mr. Sumner's removal from the chairmanship of the Committee on Foreign Relations was due to the fact that a time came when he did not recognize the President, and when he declined to have any intercourse with the Secretary of State, outside of official business. . . .

"Mr. Sumner never believed in General Grant's fitness for the office of President, and General Grant did not recognize in Mr. Sumner a wise and safe leader in the business of government. Gen-

Finally, after an exchange of notes, the two Governments by their representatives reached an agreement in the month of January, 1871, that a Joint High Commission should be constituted, with power to treat of all the subjects of controversy then pending between the two countries. It was fittingly stipulated that this distinguished body should meet at Washington.

Her Majesty's Government caused it to be known that they had resolved to entrust the grave and honorable duty of serving upon this Commission to personages of eminent distinction; nor was the compliment lost upon the people of the United States. Great Britain selected as Commissioners Earl de Grey and Ripon, President of the Council and a member of Mr. Gladstone's Cabinet; Sir Stafford Northcote, later Lord Iddesleigh; Sir Edward Thornton, British Minister to the United States; Mountague Bernard, Professor of International Law at Oxford; and Sir John Alexander Macdonald, Premier of Canada. For Secretary an excellent selection was made, — that of Lord Tenterden, Under-Secretary of State for Foreign Affairs.

On the part of the United States, the Joint High Commissioners were Hamilton Fish, Secretary of

eral Grant's notion of Mr. Sumner, on one side of his character, may be inferred from his answer, when being asked if he had heard Mr. Sumner converse, he said, 'No, but I have heard him lecture.'" George S. Boutwell: *Sixty Years in Public Affairs* (1902), vol. ii, p. 214.

State; Robert Cumming Schenck, of Ohio, a man of remarkable talent, who had served with distinction in the House of Representatives, and now had just been appointed Minister to Great Britain, to succeed Mr. Motley; Samuel Nelson, of New York, the venerable Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts, who had been Attorney-General of the United States; and George Henry Williams, late Senator from Oregon, and soon to be appointed to the office of Attorney-General of the United States. John Chandler Bancroft Davis, then Assistant Secretary of State, was made Secretary of the Commission, on the part of the United States.

The British Commission, with the exception of Sir Stafford Northcote, reached New York 22 February, 1871, on Washington's birthday. Upon arrival at Washington these distinguished servants of Her Majesty were most hospitably received.[1] Their stay, as might have been expected, was the most marked social feature of the season. Dinners and excursions were arranged after a fashion that gave ample opportunity for the visitors to meet and make the acquaintance of prominent Americans. The Commission effected its organization on the 27th of February. It held sessions in rooms of the

[1] Sir Stafford, accompanied by his two sons, reached New York on the 1st of March. The British Commissioners occupied a house on K Street, upon the north side of Franklin Square, known as the Philp residence.

Department of State, at that time occupying a plain brick building, at the corner of Fourteenth and S Streets, Northwest.

An account from the British point of view of the doings of this distinguished body is afforded in the "Life, Letters, and Diaries of Sir Stafford Northcote, First Earl of Iddesleigh," by Andrew Lang.[1]

Sir Stafford's complaints of the Home Government are frequent, and sometimes they border upon severity. His editor tells us that "the English Commissioners had to hold their own not merely with the Americans, but with the Home Government, and the representative of Canada." Mr. Lang further says: "On Good Friday he was suffering from low spirits and telegrams from the Home Government."[2] One would suppose that Mr. Gladstone had little or no responsibility or authority in the premises. In a tone of despair, Sir Stafford exclaims: —

"If the other two cables get repaired before we go,

[1] Vol. ii, p. 12. Edinburgh and London, 1890. Printed extracts from Sir Stafford Northcote's Diary convey the impression that he was not on the best of terms with the Home Government. It is known that he felt that he had not been well treated by them. He tells us that "Dinner parties, dances, receptions, and a queer kind of fox hunt, with picnics and expeditions in the beautiful Virginia country, alternated with serious business and grave discussion. The Commissioners of either nation sat on opposite sides of a long table, and had each their private room, where they withdrew, on occasion, to deliberate among themselves."

[2] *Ibid.*, p. 15.

Heaven help us! We shall not be able to respond to the American Commission's question 'How do you do?' without telegraphing home for instructions, and being informed that Her Majesty's Government prefer our saying 'Pretty well' to our saying 'Not at all well.'" [1]

It is plain to see, however, that Sir Stafford enjoyed these meetings as heartily as any one of the Commissioners. He contributed in a generous measure to the excellent feeling that prevailed throughout. Bancroft Davis, who attended every session, quotes Sir Stafford as saying: "We are on the best of terms with our colleagues, who are on their mettle, and evidently anxious to do their work in a gentlemanly way, and go straight to the point." Mr. Davis adds: "I feel sure that every American member would have heartily responded to these kindly words, and applied them to his British colleagues." [2]

Mr. Fish, upon motion of the British Commissioners, was chosen presiding officer. Throughout he proved to be the guiding spirit upon the American side. The work proceeded slowly, for there were other subjects to deal with besides the engrossing one of the "*Alabama* Claims." At last,

[1] The following extract is from Mr. Lang's text: "The Home Government kept putting in their oar, and once — for which much may by literary persons be forgiven them — they telegraphed that in the Treaty they would not endure adverbs between 'to,' the sign of the infinitive, and the verb. The purity of the English language they nobly and courageously defended." Andrew Lang: *Life, Letters and Diaries of Sir Stafford Northcote*, p. 13.

[2] *Mr. Fish and the Alabama Claims*, p. 73.

however, by the 3d of May, the parties had settled upon the language of the Treaty.[1]

We quote from Sir Stafford's Diary of May 6:—

"Held our last conference to-day. Confirmed the protocol, and then made flattering speeches one to another. Read over the Treaty and saw the ribbons put in, ready for sealing on Monday; five ribbons drawn through each copy (red and blue) so that one Englishman and one American Commissioner may seal upon each ribbon. Something like the mode of assigning partners in the cotillion. We all carried off some of the ribbon as a memorial. Gave Mr. Fish a copy of my Ode to the Fourth Article. Signed a number of copies of our photographs, the Americans signing theirs at the same time. A framed copy of each is to be presented to us." [2]

On the forenoon of Monday, 8 May, 1871, the signatures of the High Contracting Parties were affixed in a room into which the ladies had sent a quantity of flowers. The Commissioners, after signing, shook hands all around, and then turned to strawberries and ice-cream — *emolliunt mores*. Thus concluded, amid the best of feeling, one of the most significant ceremonies that have been witnessed in the United States since the formation of the Government. It was the triumph of a kindly senti-

[1] As their labors were reaching a conclusion, a day or two before signing the Treaty, Sir Stafford appears to have been in a particularly good humor: "Latterly, I think we have had the whip hand of them, and De Grey has managed Fish most skilfully." Letter to Granville (May 5, 1871), *Life of Lord Granville*, vol. ii, p. 89.

[2] Andrew Lang: *Sir Stafford Northcote*, p. 17.

ment, and of an honest, straightforward desire to do that which was right and fair. It was Anglo-Saxon nature at its best.

The first Article of the Treaty contained an expression "in a friendly spirit" of "regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels." We may well believe that it cost the Englishmen something to utter these words. Their action went a long way toward allaying bitterness of feeling. A manly thing it was to do; and the record stands for all time to the credit of a manly race.[1] The Treaty contained forty-three articles, besides the preamble. The first eleven treated of the claims generically known as "The *Alabama* Claims." They provided that all the claims growing out of acts committed by the vessels, and generically known as "The *Alabama* Claims," should be referred to a Tribunal of Arbitration, to be composed of five Arbitrators. They were to meet at Geneva, Switzerland, and to examine and decide all questions laid before them on the part of the respective Governments.

[1] Protocol xxxvi of the Conference of the High Commissioners contains a statement giving an account of the negotiations from which the following is an extract: "The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States." The protocol is printed in full in *Mr. Fish and the Alabama Claims*, p. 148.

It was further agreed that three rules, as to the duties of a neutral Government, in respect to vessels intended to carry on war against a power with which it is at peace, should be taken as applicable to the case, which rules were formulated in terms of Article VI of the Treaty.[1] Great Britain did not assent to these rules as a statement of principles of international law, which were in force at the time when the claims arose, but Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbi-

[1] The three rules are as follows: —

A neutral government is bound: —

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

The purport of these rules, it may be added, was subsequently embodied in an amendment (33 and 34 Vict. c. 90) to the Foreign Enlistment Act.

trators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

This agreement, as may readily be imagined, had a most important bearing upon the questions at issue. When the contracting parties at last found themselves in harmony as to the terms of the rules, the critical point of negotiation had been passed in safety. Another stipulation, hardly less weighty, was that the two countries agreed to observe these rules as between themselves in the future. Not only this; they united in a promise to bring the rules to the knowledge of other maritime powers, and invite those powers to accede to them. As to the remaining subjects of the Treaty, it is enough to remark that they were satisfactorily disposed of, with comparative ease.

No difficulty arose in securing the ratification of the Treaty in the Senate. The country was only too glad that an honorable basis of settlement had been reached. It may be said of England, that while the terms of the Treaty did not escape criticism, the news that the *Alabama* Claims were speedily to be settled brought into every quarter of the kingdom a sense of relief.

The same good fortune that thus far had attended the conduct of the negotiation smiled upon the selection that the several Governments made of the men who were to carry the provisions of the Treaty into effect.

President Grant, acting in harmony with what it is not too much to describe as the universal sentiment of the country, appointed Charles Francis Adams to be Arbitrator on the part of the United States. Her Majesty's Government conferred a like honor upon Sir Alexander Cockburn, Lord Chief Justice of England, naming him as Arbitrator on the part of Great Britain. The King of Italy named Count Frederic Sclopis, of Turin, a Senator of Italy, and a distinguished judge and lawyer. The President of the Swiss Republic chose Jacques Staempfli, of Berne, prominent in business and politics, as the fourth Arbitrator; while the Emperor of Brazil selected for this eminent position the Baron d'Itajubá, at that time his Minister Plenipotentiary at Paris.

The second Article of the Treaty provided that each party should name one person to attend the Tribunal, as its Agent, to represent it generally in all matters connected with the Arbitration.

To this extremely responsible post the President called John Chandler Bancroft Davis (1822–1907), who, as has been seen, had already become identified with the Treaty by serving as Secretary of the Joint High Commission. Before entering upon his new duty the appointee resigned the office of Assistant Secretary of State.

Events at once proved that a wiser choice could not have been made. Bancroft Davis (for so he was usually called), then in the prime of life, was suited

alike from natural gifts and from special training for such a mission. He was born in 1822, at Worcester, Massachusetts, the son of "Honest John Davis," Governor and United States Senator. Graduated from Harvard College, in the Class of 1840, Mr. Davis studied law, and for a brief season practised his profession in New York City. He served as Secretary of Legation in London at the time (1849–1850) when Abbott Lawrence was our Minister at St. James's. Later, while living in New York, he became correspondent in this country of the London *Times*. From these and from other sources Mr. Davis had gained a wide acquaintance with political affairs, domestic and foreign. He had habituated himself to discern seasonably their shifting scenes, and to estimate men and measures at a proper value. This combination of a thorough knowledge of legal principles and a familiarity with the current politics of the United States and of foreign countries closely related to us, seemed to mark Mr. Davis as the one man above all others to whom could be entrusted this grave duty.[1] Secretary Fish, long his personal friend, reposed an unbounded confidence in the judgment and discretion of the younger man who had served so acceptably as Assistant Secretary of State.

[1] "The Administration had appointed the Honorable J. C. Bancroft Davis, the most accomplished diplomatist of the country, as the Agent of the United States." George S. Boutwell: *Sixty Years in Public Affairs*, vol. ii, p. 200.

England was not less happy in her choice of an Agent. The appointment went to the Under-Secretary of State, — a man of ability and solid attainments, Charles Aubrey Stuart, C.B., Lord Tenterden. The name of his grandfather (Abbott), the first Lord Tenterden, Chief Justice of England, is familiar to the student of common law. The grandson had shown himself to be well versed in the law of nations, and in the practice and traditions of diplomacy. Of simple and unassuming manners, Lord Tenterden evinced remarkable skill and an exemplary fidelity in his efforts to serve Her Majesty's interests, and to carry out in good faith the Treaty. Later in these pages it will be seen how fortunate it was for the cause of arbitration that these two men, on whom in a critical moment rested the duty of standing each for a people high-spirited and inclined to firmness that would go to the verge of obstinacy, had come to respect and to trust one the other. Friendly relations had grown up between them while thrown into intimacy daily at Washington as Secretaries of the Joint High Commission.

Mr. Davis remarks of Lord Tenterden: —

"It was a pleasure to me, and, without exposing myself to the imputation of vanity, I may say I believe it was a pleasure to him, to find the relations renewed at Geneva. Often during the negotiations at Washington, and still more often during the trying times at Geneva, we were obliged to trust to verbal statements of agreements or arrangements made between us, from sheer

inability to find time to write out the details. Never, so far as I remember, was there the slightest misunderstanding between us as to what we had agreed to." [1]

The Treaty had expressly provided that each party should name one person to attend the Tribunal as Agent; but it specified nothing with respect to the appointment of Counsel. That it contemplated the actual presence of Counsel is evident from the language of Article V — giving to the Arbitrators the right, if they desired further elucidation with regard to any point, to require a written or printed statement, or argument, or oral argument by *Counsel* upon it.[2]

The duty devolved upon Secretary Fish to select the Counsel from among the great lawyers of the United States. An argument would have to be prepared at some locality in Europe remote from the books and papers of the Department of State, and in circumstances disadvantageous in other particulars. Obviously, a single individual would not be equal to the task, however learned and able. Mr. Fish appears to have determined to choose two lawyers for the office. He fixed upon William Morris Meredith of Philadelphia and Caleb Cushing of Washington, both eminent in their profession, and thoroughly well qualified to perform the duties required, and addressed them a letter, 4 September, 1872, asking them to act conjointly.

[1] *Mr. Fish and the Alabama Claims*, p. 86.

[2] *Gen. Arb.*, vol. I, p. 14.

Mr. Meredith (1799–1873) stood, by common consent, at the head of the Bar of Philadelphia. He was a leader "with the unmistakable qualities of true greatness."[1] His experience at the bar was extensive, his intellectual supremacy undisputed. Mr. Meredith had also gained experience from service in the Legislature of Pennsylvania. President Taylor, in 1849, called him to his Cabinet as Secretary of the Treasury; and he held that office during Taylor's administration, and for a little while under President Fillmore, — somewhat more than a year in all. Subsequently the State of Pennsylvania was so fortunate as to secure his services as Attorney-General, at a critical period of the early stages of the war for the Union. Because of his weight of character and conspicuous ability, the Governor appointed him a delegate to the Peace Congress of 1861. In a word, Mr. Meredith was one of that class of men who serve their fellows because public sentiment literally calls them to public office.

Mr. Meredith, on the 5th of September, 1871, accepted the position of Counsel. Bancroft Davis visited Philadelphia once or twice to consult with him. It appears that Mr. Meredith had supposed

[1] Richard L. Ashhurst, a prominent lawyer of Philadelphia, in a valuable paper in memory of Mr. Meredith, marked by just discrimination and a sound conception of the indispensable qualities of a lawyer, read before the Pennsylvania Bar Association, 26 June, 1901. One rises from a perusal of this sketch with an admiration not more for the natural gifts and solid attainments of its subject than for his nobility of character in all relations, public and private.

that he would be called on to prepare an Argument which either might not require his presence in Europe, or, if he should go there, would detain him for only a brief period. His health was none of the best. After bestowing some thought upon the law points involved, Mr. Meredith concluded that his infirmity was such that he would not risk a voyage to Europe. He accordingly resigned the post, 17 October, 1871.[1]

Caleb Cushing (1800–1879) enjoyed a reputation throughout the country as a learned lawyer and a statesman of remarkable attainments in the field of public law. Perhaps there was no one to be found in the United States better equipped for the work to be done at Geneva than this veteran jurist and diplomatist. Nominally a citizen of Newburyport, Massachusetts, he had for years lived at the Capital, where he practised before the Supreme Court of the United States, and before mixed commissions for the adjudication of claims. Mr. Cushing's name is associated with the trial of many important cases. He was an untiring worker. When not preparing a law brief, he would apply himself to acquiring a stock

[1] A sense of regret pervaded the profession upon learning that the country would not have the benefit of Mr. Meredith's services. Says Mr. Ashhurst: "It would have been almost too much to hope that he could in the condition of his health have been able to make the voyage and conduct the argument; and his relinquishment of the journey to Geneva was undoubtedly wise, though a great disappointment to Pennsylvania." *Ibid.*, p. 52. See *post*, Appendix II, for further remarks upon the subject of Mr. Meredith's resignation.

of information on some out-of-the-way subject, or devote his time to reading in any and all fields of literature. Ancient and modern history alike he mastered; he could read and speak several languages. With a marvellous memory, and an insatiable desire to add to his supply of learning, he let no day pass without broadening his bounds of knowledge. From all that he thus acquired he could produce this or that fact for use at a moment's notice. Though he read with rapidity, he retained everything worth retaining; and when he drew it forth from the storehouse of his memory, the statement was exact and complete. As an instance of wonderful travel through printed pages, it may be mentioned that when appointed to the bench of the Supreme Court of Massachusetts, Cushing took up the State Reports, and in nineteen days he had read them through — at the rate of three volumes a day.[1]

Mr. Cushing had acquired a considerable experience from service in Congress,[2] and in the Legislature

[1] "Mr. Forney, editor of the *Washington Globe*, when it was the administrative organ, told me that when an article was needed on our foreign relations, he would call on Cushing, who would write one immediately, without a moment's preparation, better than anything else they could get from any other source. One day, a discussion took place in the Cabinet upon a subject connected with the politics of a little German principality of which all the members were entirely ignorant, except Cushing, whose unfailing resources were equal to the emergency." Eben F. Stone: *Address before the Essex Bar* (1889), p. 23.

[2] "With an amazing celerity he mastered in turn the learning upon each subject of legislation as it came up. Daniel Webster is

of his State, where he showed himself to be a debater of the first rank. He was serving as an Associate Justice of the Supreme Court of Massachusetts when called by President Pierce to become Attorney-General. His opinions while holding that Cabinet office attracted attention for their learning and vigor. They covered a wide range of topics. Mr. Cushing in 1841 was sent as Commissioner to China. In that capacity he negotiated an important treaty, — the first treaty ever made between that country and the United States. In April, 1860, Mr. Cushing (who was a Democrat with Southern proclivities) presided over the National Democratic Convention, at Charleston, South Carolina. He went with the wing of the party that seceded and afterwards nominated Breckinridge, at Baltimore. Allusion has already been made to his military service in the Mexican War. Upon the outbreak of the rebellion General Cushing tendered his services as an officer to Governor Andrew of Massachusetts, but they were not accepted. In fine, Caleb Cushing from his earliest manhood busied himself in some public station or other, high and exacting, where he invariably proved himself to be a worker of ceaseless activity, a man of vast learning, and of a prodigious memory; a lawyer stimulated by a restless ambition to excel,

reported to have said of Cushing that he had not been six weeks in Congress before he was acknowledged to be the highest authority on what had been the legislation of Congress on any given subject." *Essex Bar Address.*

and to display to the utmost, during every waking hour of the day, the remarkable talents with which Nature had endowed him.

His rank as a lawyer was high.[1] A very learned man, he was yet not a great lawyer, in the sense that Marshall and Curtis and Black were great lawyers.

Says Stone: —

"Cushing was an accomplished lawyer, thoroughly versed in the science of jurisprudence, and specially familiar with federal and international law, but as a practitioner he was not specially successful. . . . He lacked sense of proportion, and the faculty of distinguishing what was vital and essential from what was cumulative and collateral. He argued a question as if he thought he must thoroughly elaborate and exhaust it in all its relations, and sometimes failed to present and enforce with any special emphasis the vital point of a case, because of his inability to see the whole of it in its proper perspective. He was deficient in what artists call the feeling for values."[2]

It was an open secret at Washington for years that Mr. Cushing used to be called on from time to time to aid the Department of State when a question of unusual difficulty arose. Upon the happening of the *Trent* affair, it was to Mr. Cushing that the merchants of New York turned for advice as to the

[1] Just after I had come to the bar in Boston, one day the news went around that Caleb Cushing had arrived from Washington to argue a cause in the Circuit Court of the United States. I well remember that the young lawyers flocked to the courtroom to hear him.

[2] *Essex Bar Address*, pp. 27, 31.

law of nations bearing upon the action of Captain Wilkes. Of course this accomplished lawyer was perfectly familiar with the conduct of England in respect to the Confederate cruisers; and Mr. Davis consulted him freely in the preparation of the Case of the United States.

Though it is to anticipate a little, let me add here the testimony of Bancroft Davis to the aid that Mr. Cushing rendered him on more than one occasion at Geneva, since the successful management of our cause there was due in no slight degree to the perfectly harmonious manner in which these two thoroughly trained masters in the diplomatic field worked together: —

"In all these difficult matters I have uniformly found in General Cushing a friendly, prudent, considerate, and safe adviser, never obtruding advice when it might annoy or perplex me, but always ready to assume responsibility when necessary; and animated only by a patriotic desire to maintain the honor of his country. I do not, in saying this, mean to be understood as discriminating against the other gentlemen, who need no certificate from me. I have been impelled to say this of General Cushing because, as the Dean of the Board of Counsel, he has been the medium through which I have held official communication with them, and in speaking, speaks for them as well as for himself." [1]

After the declination by Mr. Meredith, two lawyers, at the head of the profession, were invited to

[1] Davis to Fish, 24 June, 1872.

become of counsel for the United States, Benjamin Robbins Curtis (1809–1874) of Boston, and William Maxwell Evarts (1818–1901) of New York; and a letter was addressed on the same day, 25 October, 1871, to each of them.

The former, while an Associate Justice of the Supreme Court of the United States, had secured lasting reputation by his dissenting opinion in the famous Dred Scott decision. The names of Curtis and Evarts are popularly associated in the minds of the profession and the public for the masterly defence put forward in the Senate upon the impeachment trial of President Andrew Johnson. The speech of Evarts is remembered in some quarters, particularly because of his witty description of Boutwell's flight from the dome of the Capitol to the "hole in the sky." Whoever reads the concise, logical argument of Curtis, delivered upon that memorable occasion, will surely agree with what a distinguished man there present remarked, when Curtis resumed his seat, "There is nothing more left to be said."

Without question, Curtis held the rank of the foremost lawyer in America. He stood far in advance of those who approached him, in the consummate ease with which he could state a case in plain and direct terms. His words were few — for rarely did he address the court for more than half an hour. He would open to the jury, for example, a patent cause of an intricate character, in brief sentences, so simply and so clearly stated that every man on the

panel saw through it all. With an unerring instinct this wonderful advocate discerned the true turning-point of every controversy in which he was of counsel. The unrivalled acuteness he displayed in seizing upon that which was vitally important was excelled only by that extraordinary talent which enabled him to convey to the mind of another a perfectly clear view of everything of controlling moment that the issue involved.

When you listened to an argument by Mr. Curtis you thought that his client's case was one of the simplest that ever a court had to deal with; you saw plainly just what it was that ought to be decided — and then you concluded that, for this time, at any rate, Mr. Curtis had been retained on the right side. The gift was his to a degree so remarkable that Mr. Curtis always held the listener to the closest attention; and that too by no grace or trick of oratory, but by force of the logical sequence of his quietly delivered argument that had a wonderful intellectual fascination about it.

Had Curtis gone to Geneva, legal literature would have been enriched by a model of forensic reasoning; his chapters of the Argument would have been strong, clear, and most convincing. But circumstances did not permit him to accept the office. The letter of Secretary Fish tendering the appointment reached him just as he was returning from a trip abroad, whither he had gone for his health, after a family affliction. Says his biographer: —

"He scarcely felt able in strength and spirits to the encounter of another voyage across the Atlantic, immediately after his return home, without some urgent call of duty. . . . If, however, news of the appointment had reached him before he left Europe, he would doubtless have remained, and taken part in the proceedings at Geneva." [1]

Fortunately, the other appointee was able to accept the invitation to act as Associate Counsel. Mr. Evarts was an ornament of the great Bar of New York City. Few men at any American Bar have ever surpassed this distinguished advocate in the skill and acumen applied in the trial of causes, whether before a jury or a full bench. He was fluent of speech, and he possessed a nimble wit, together with the faculty of holding attention until his animated and pleasing periods should have done their work of persuasion. Mr. Evarts, then in his fifty-fourth year, had won many important causes, and had come to share with Charles O'Conor the leadership of the New York Bar. He had attained some degree of prominence in politics, chiefly as a speech-maker. In the Republican Convention of 1860, he was Chairman of the New York delegation, and in that capacity had proposed the name of William H. Seward as a candidate for the Presidency. The selection of Mr. Evarts for Geneva was deemed particularly acceptable to the merchants of New York

[1] George Ticknor Curtis: *Memoir of Benjamin Robbins Curtis* (1879), vol. i, p. 443.

and Boston, of whom not a few were personally interested in the decision to be pronounced by the Tribunal. His name was suggested to the President by Bancroft Davis, because of Mr. Evarts's rank at the Bar of the great mercantile city of New York.

It being now determined that the Counsel should be three in number, it was thought desirable in the choice of a third name to go back from the seaboard to the West. On 18th November the position was tendered by the Secretary of State to Morrison Remick Waite (1816–1888) of Toledo, Ohio.

Mr. Waite accepted the position, the more inclined to go to Geneva from the circumstance that his classmate, Mr. Evarts (Yale, 1837), was of the Counsel. Mr. Waite, though not at that time widely known to the country, stood in the front rank of the lawyers of his State, impressing all who came in contact with him with a sense of his absolute fairness, as well as his ability and skill in the trial of causes. He came of good New England stock, his father having been Chief Justice of Connecticut. The reputation of Mr. Waite in Ohio was that of an upright, successful lawyer, of singular unselfishness and purity of character. One could not talk five minutes with Mr. Waite and fail to recognize in him a man of good sense and sound judgment,—disposed to be tolerant, charitable, and broad-minded.[1] It is

[1] It is understood that Columbus Delano of Ohio, Secretary of the Interior, had brought to the notice of the President proof of the fitness of Mr. Waite for this position, of his attainments as a lawyer, and of his sterling qualities as a man.

hardly needful to remark that all three of the Counsel worked together in perfect harmony.

The Secretary of State, on 8th December, addressed to each of the Counsel a letter embodying briefly the instructions of the President on the subject of his duty. A significant feature of this letter is the reference made to the relation that the Counsel were to bear to the Agent of the United States. From one point of view, the Agent could be considered as the client: —

"The presentation and the management of the legal argument and the treatment of the questions of law and evidence [says the Secretary] are committed to the discretion and judgment of yourself and your associate counsel. The President thinks that in this branch of your duty you may find Mr. Davis's familiarity with the history of the Case of advantage, and that a free interchange of opinions and of views and consultations with him, may be of benefit." [1]

The bringing together of further proofs in detail of the losses sustained by owners of vessels and cargoes on account of the depredations committed by the Confederate cruisers required an enormous amount of work. In order to deal efficiently with this volume of business, the office of Solicitor for the United States had been created. For this position, Charles Cotesworth Beaman, Junior, of New York City (Harvard, 1861), was selected in December. During the previous month he had been appointed an ex-

[1] *Gen. Arb.*, vol. ii, pp. 414–416.

aminer of claims in the Department of State. Mr. Beaman was a young lawyer of unusual promise. While a student at the Harvard Law School he was regarded as one of the brightest men in attendance. He took a prize for an essay upon the subject of "The Rights and Duties of Belligerent War Vessels." In a modified form this paper was published in the *North American Review* for October, 1865. The firm grasp and the vigor with which the writer handled his subject attracted the attention among others of Senator Sumner, who, recognizing Mr. Beaman's talent and maturity of thought, invited him to become his private secretary at Washington. Accepting the invitation, Mr. Beaman assumed the duties of Clerk of the Committee on Foreign Relations of the Senate.[1]

In March, 1871, Mr. Beaman published a book entitled "The National and Private Alabama Claims and their Final and Amicable Settlement." Although from necessity somewhat hastily pre-

[1] My classmate, Beaman, was one of the most delightful men I have ever known. Intellectually strong, he had a kind and generous disposition; and he was endowed with a never-ceasing supply of animal spirits. On social occasions, whenever present, he was the "life of the company." His capacity for friendship was truly remarkable. Almost at first sight, every one confided in him. The untimely death of Mr. Beaman, in New York City in 1900, was a distinct loss to the community, where he had taken rank as an influential citizen, doing valuable work for the public interest, as well as maintaining a foremost place among the leaders of the bar. Mr. Beaman served efficiently as an overseer of Harvard University, and took a special interest in the development of the Law School.

pared, this volume evinced a thorough knowledge of the subject, an intelligent conception of the principles involved, and much good sense in suggesting how to solve the problem presented.

Edmund Wetmore, in a memorial prepared by him for the Association of the Bar of the City of New York, has felicitously said of Beaman:—

"His sound judgment, perfect sincerity, genial temper, wide knowledge, and unquestioned integrity inspired a confidence, not only in his clients, but in those opposed to them, that often gave his advice as counsel all the influence of the decision of a judge. . . .

"Mr. Beaman was in every sense of the word a good man. Beyond reproach in every private relation, he was benevolent without ostentation, religious without cant, honest and sincere, a faithful counsellor, a patriotic citizen, a constant friend, — a noble man." [1]

After the *Alabama* had begun her course of destruction, the Department of State, upon receiving complaints, treated each case individually, transmitting to Mr. Adams at London a statement of the claim, together with the proofs to be laid before the English Government, with a request for redress. The earliest claims were those growing out of the burning of ten whalers at the Azores in September, 1862. The language of Mr. Adams in his letter of 20 November following was that his Government asked for "redress for the national and private injuries" sustained, as well as a more effective preven-

[1] *Report for* 1901, pp. 98, 99.

tion of any repetition of such lawless and injurious proceedings in Her Majesty's ports hereafter. Record evidence of claims poured into the Department until the documents, by the end of the war, formed a large bulk of material. As soon as the Treaty of Washington had gone into effect, the Department of State issued a circular letter, requiring persons who desired to lodge claims to be laid before the Tribunal at Geneva to file their papers with the Department seasonably, advising them that the time for presenting the Case of the United States would expire on 16th December, 1871.

The work which Mr. Beaman superintended was thoroughly done. It consisted of furnishing a printed list giving the names, dates, figures, etc., and a memorandum of the papers accompanying the statement of the loss. This list nearly fills volume VII of the Appendix to the Case of the United States. In April following, a revised list of claims was laid before the Tribunal. Neither the original documents nor copies were taken to Geneva. It was sufficient that the Government went upon record averring that claims of this description, in the amounts stated, had been filed at Washington.

The American Arbitrator, the Agent, and each one of the Counsel was provided with a secretary. These gentlemen were: Mr. Brooks Adams, Secretary to his father, Charles Francis Adams; Mr. John Davis, Secretary to his uncle, J. C. Bancroft Davis; Mr. Frank W. Hackett, Secretary to Caleb Cush-

ing; Mr. William F. Peddrick, Secretary to William M. Evarts; and Mr. Edward T. Waite, Secretary to his father, Morrison R. Waite.

Article III of the Treaty provided that the written or printed Case of each of the two parties, accompanied by the documents, official correspondence, and other evidence on which each relied, should be delivered in duplicate to each of the Arbitrators and to the Agent of the other party within a period not exceeding six months from the date of the exchange of the ratifications of the Treaty. This date was 17 June, 1871. So it became necessary that the American Case, with its accompanying documentary proof, should be presented to the Tribunal by 16th December, 1871.

Bancroft Davis wrote the American Case. From the beginning to the end of this document he is the author. Mr. Davis took the precaution to print the first chapters in memorandum form. These he submitted to President Woolsey of Yale, William Beach Lawrence of Rhode Island, Judge E. Rockwood Hoar, and to Caleb Cushing, for such suggestions and advice as they might see fit to tender. The last-named gentleman had, upon more than one occasion (as has been stated heretofore), conferred with Mr. Davis, and given him substantial help by way of suggestions. The Case, it may be added, was prepared under the watchful eye of Secretary Fish, who approved every word of the final draft.

Accompanying the Case were seven volumes of documentary evidence and correspondence, one of them being devoted to a presentation of private claims, detailing the amount of losses with references to proofs of the same.[1]

In the sense of an instrument adapted perfectly to the work it is designed to accomplish, the American Case may be pronounced a masterpiece. The author displays a grasp of the subject that is firm and comprehensive. His style is clear, his reasoning forcible and logical. The Case is a work of real literary merit. The story is told so as to awaken interest in the reader. Taken up even to-day the narrative will be found entertaining and instructive.[2]

[1] The Case contained a map of the southeast coast of the United States, and its relation to the British West India colonies. This map showed the proximity of the port of Nassau, New Providence, to Charleston and Savannah, it being desirable that the neutral Arbitrators should understand the facility with which blockade-running was conducted from this British island.

[2] Says Mr. Cushing: "It was my opinion on reading the American Case for the first time, and it is my opinion now, after repeated readings, that it is not only a document of signal ability, learning, and forensic force, — which indeed everybody admits, — but that it is also temperate in language and dignified in spirit, as becomes any state paper which is issued in the name of the United States." *The Treaty of Washington*, p. 31.

"The Treaty having been made, the next step was the framing of the American Case. This very important work Mr. Fish entrusted to his assistant, Mr. Davis, who performed it, under the general direction of Mr. Fish, in the best possible manner. No stronger statement of the position and rights of the United States could, I think, have been set forth by any one." George F. Edmunds: *Ad-*

With a commendable foresight Mr. Davis had caused the Case and a large part of the accompanying documents to be printed both in English and in French, a precaution which was not adopted by the other side. Our Agent was aware, too, how vital was it that Continental Europe should possess exact and trustworthy information as to the issue in controversy. He had the Case printed in Spanish.[1] He also printed it in English (as well as in French) at the Brockhaus Press of Leipsic, in octavo form, with a full index. Copies of the Case thus reproduced were distributed judiciously in several countries.

On the 13th of December, 1871, Mr. Davis left Paris for Geneva, in company with Mr. Adams, Sir Alexander Cockburn, and Lord Tenterden. They were enabled, while travelling, to arrange the preliminaries for organizing the Tribunal. On the 15th, a bitterly cold day, after calling upon the other Arbitrators, Mr. Adams, accompanied by Mr. Davis, went to the Hôtel De Ville in Geneva, to pay their respects to the President of the Swiss Canton, and to the Council of State. Mr. Adams, in fitting terms, expressed the appreciation of the United States for the courtesy Switzerland had shown in

*dress in Memory of Hamilton Fish before the Legislature of the State of New York* (1894), p. 48.

[1] Steps were taken to have the Case printed in Italian; Mr. John Davis went to Rome and consulted with our Minister, Mr. Marsh, to that end; but the plan was found to be impracticable in the short time at disposal.

tendering the Hôtel De Ville for the Conference. Upon proceeding to organize the Tribunal, Count Sclopis was chosen to preside; and M. Alexandre Favrot, of Berne, was appointed Secretary. An exchange was then effected of the British and American Cases.[1]

[1] I have in my possession a pamphlet of fifteen pages, entitled *An Incident of the Alabama Claims Arbitration*. It is a paper that was read by its author in 1906 before a patriotic society in the State of New York. The author tells us that he was a friend of Benjamin F. Stevens (1833–1904), Despatch Agent of the United States at London. While spending several days in Mr. Stevens's company at a hotel in Winchester, England (about 1887), the author, it seems, heard a story from that gentleman, who said it should not go into print so long as he (Stevens) lived. The story is, briefly, as follows:—

As Agent, Mr. Stevens had received a copy of the American Case; and he was looking for duplicate copies to be delivered to the British Government. The last steamer had arrived, but no package. The copies had to be delivered to the British Agent by Monday, 18 December, 1871. On Saturday, the 16th, Stevens drove to General Schenck's, found a copy there, but no duplicates. He drove to Downing Street, and the British Secretary for Foreign Affairs told him that no copy had been received. Stevens asked him what would be the result if the Case were not received in time. The Secretary replied: "Failure to deliver the Case is an abandonment of the provisions of the Treaty by the Government that fails of compliance." Stevens called a cab, went to Schenck's, and after the General had declined to lend his copy he (Stevens) "quietly backed to the table upon which the document lay and passed his hands behind him, and took the thin book (less than one inch in thickness), and slipped it into the skirt pocket of his coat," etc., etc.

The narrative goes on to say that Stevens sent back to their printing-office a group of typesetters, who were just starting on their Saturday holiday, he promising them extra pay, getting a lithographer to make a map, and so on, and states that by Monday morning a hundred copies of the book were ready. Before twelve

After these formal proceedings had ended, the members of the Tribunal dined together, at the invitation of the two Agents jointly, and thereupon all parted on the best of terms.

Immediately upon his return to Paris, Mr. Davis set to work upon the preparation of the Counter-

o'clock Stevens had delivered two copies of the reprinted Case to Lord Tenterden, at the Foreign Office. This act "saved the Arbitration at Geneva to us."

The explanation given by Mr. Stevens was, "Instead of committing so important a matter to the hands of a special messenger to bring it across the Atlantic, or sending the number of necessary copies at the time that a single copy was sent to General Schenck, and a single copy was sent to me, the bundle was entrusted to the custody of an express company, and as it was thought, in time for the last steamer, but the express messenger, knowing nothing of the importance of the package, treated it like any other, and it reached New York after the steamer had sailed."

Of course this story, so far as serving duplicate copies upon the British Agent is concerned, is simply absurd. Mr. Davis brought over with him cases containing not only the necessary copies of the American Case, but a complete set of the seven volumes of documents — duplicate copies for each of the Arbitrators and for the British Agent. Mr. Davis on the 4th reports his arrival at Paris to Mr. Fish, and says: "The several cases entrusted to me have arrived, also." The British Agent, as we have seen, received the American Case and the accompanying seven volumes of documents, on Friday, 15 December, at Geneva — so it became quite superfluous for Mr. Stevens to drive around in a cab on the 18th, and otherwise exert himself "to save the Treaty."

My excuse for taking up space with these details is, that it seems hardly safe to leave this remarkable story uncontradicted; else some one may at a future day actually believe that our Department of State did, at least at one time, conduct its despatch business in a happy-go-lucky manner. Although the "incident" is not merely untrue, but ridiculous, one cannot be sure that, in spite of

Case. As we shall presently see, England had now adopted the policy of trying her case in the newspapers. Public opinion adverse to the United States might have gained considerable headway upon the Continent, had not our Agent kept a vigilant eye upon the press of Great Britain, as well as noted day by day what the newspapers of the principal cities of the rest of Europe were saying upon the topic of the "*Alabama* Claims." Mr. Davis took care that there should frequently appear in Continental journals of the largest influence articles setting forth substantially the American Case, with the contentions of the United States, as they really existed. This undertaking, upon which our Agent bestowed time and thought, had the effect of bringing about results that were to an eminent degree satisfactory.

Mr. Fish was enabled to keep in touch with what was going on, by means of full official reports sent by mail to Washington at every opportunity. In addition to these reports, which were as complete as practicable, Mr. Fish received regularly a "confidential" letter, that supplied him with each day's

its absurdity, tradition may not by and by countenance the tale of how the energetic Stevens, once upon a time, "saved the Treaty."

It is almost superfluous to quote from Mr. Bancroft Davis, as follows: "It fell to my lot to prepare the document styled in the Treaty the Case of the United States. I did this to the best of my ability, and sailed for Havre in November, with the necessary quantity of copies in English and in French to enable me to comply with the provisions of the Treaty." *Mr. Fish and the Alabama Claims*, p. 86.

record of what was being accomplished, with a free comment thereon, and an account of what could be gathered — and it was by no means of small volume — of the talk and speculation that accompanied these proceedings. In this line of work Mr. Davis exhibited a peculiar skill and tact. Every one of his "confidential" letters must have been sent off in haste, yet all are accurate in expression, and written in pure, limpid English. Where the information conveyed partakes of the character of rumor, the needful qualifications as to probable truth are carefully embodied in the Agent's report. The reader feels that a firm and skilful hand is guiding the pen. The unusually attractive style of these confidential communications is so apparent as to emphasize their literary value. At a future day they can be read with pleasure as well as profit. The original manuscript letters are bound up with the other papers — all of which are preserved in five stout volumes, in the Archives of the Department of State.

## CHAPTER IV

### OUR WORK AT PARIS

Our party, as has already been related, found itself at one o'clock on the morning of Thursday, the 8th of February (1872), installed at the Hotel Westminster, in the Rue de la Paix. We were all tired enough to sleep soundly. By half-past eight, when there could have been not overmuch daylight, Andrew awoke me, bringing in upon a tray a pot of coffee and a long roll of bread. In a subdued tone he imparted to me the information that he had discovered it to be a custom of the country to let a man have this much, in order to sustain life, while he waits in the reasonable assurance that later on he will be likely to get a real breakfast. Andrew discreetly withheld an expression of opinion; but from his manner it was to be gathered that so wide a departure from the good old Virginia style of beginning the day failed to meet with his entire approval.

Mr. Cushing, after having me attend to a few matters of business in his rooms, took me with him to another part of the hotel, to pay our respects to Mr. Bancroft Davis, the Agent of the United States, and to Mrs. Davis. I found the former to be a fine-looking, dignified gentleman, of apparently about five-and-forty, well-built and erect of form, with a

countenance that betokened to an unusual degree strength of character. His manners indicated the refined taste of a scholar, while there were not lacking those signs of force and energy that mark the successful man of affairs. He greeted us cordially, and I instantly felt at home. The sight of him, I may add, inspired a renewed confidence in the success of our cause.

Of Mrs. Davis, let me confess that I never shall forget how graciously she received her callers of that morning. I became at once aware that the wife with heart and soul was helping her husband in the mission for which he had come abroad. Her agreeable converse was marked by animation, by a sympathetic tone of voice, and that nameless charm which attends high breeding. No wonder that Lord Selborne (Roundell Palmer), in recording his impressions of Geneva, was moved to say of Mrs. Bancroft Davis that she "was a general favorite." [1]

At a later period, upon considering how fully this charming woman had apprehended the nature of the task committed to her husband, with what measure of diligence she had aided him, both from her familiarity with our politics and those of England (not to speak of the traditions of diplomacy), and from her knowledge of French and other languages; considering, too, how unerring was her insight into character, with what constancy she had encouraged Mr. Davis, amid perplexities at times threatening

[1] *Memorials Personal and Political*, 1865–1895, vol. i, p. 247.

disaster, and how surely her quiet influence had confirmed each of us Americans in the conviction that, throughout the controversy with Great Britain, our country was absolutely right, I was not slow to reach the conclusion that no small share of the honors won at Geneva justly belong to Mrs. Bancroft Davis.

A stranger to the etiquette of the diplomatic service, I attached an undue importance to the circumstance that the American Minister, immediately upon our arrival, had left his card for me at the Hotel Westminster. At any rate, I was greatly pleased. Gratification on my part had a more substantial basis, however, when I came to discover, as I soon did, what an attractive and excellent man Mr. Washburne was. All thought of courtesy merely official was quickly merged in a most enjoyable personal intercourse. In company with his son Gratiot, Mr. Washburne called early in the forenoon of our first day upon Mr. Cushing and Mr. Beaman; nor did he forget to extend a hearty welcome to each of the secretaries.

Seldom had I met with a man who from the start so unreservedly gained my respect and liking as our Minister to France. A robust American, he showed himself to be a person of abounding common sense, and a big heart. Nothing could exceed the frankness and good-nature of his bearing. Thoroughly democratic in taste and feeling, Mr. Washburne treated every one kindly—in that "breezy" way, so to

speak, that we are accustomed to term "Western." Upon more than one occasion he asked me to dine *en famille* at his hotel, in Avenue de l'Impératrice. At these times, prompted by my questions, he would talk freely of American politics, and particularly of men with whom he had served in Congress. Mr. Washburne's long experience as a member from Illinois and his intimacy with leaders in either party rendered these talks of lively interest. I particularly recall what he had to say of the nomination of Horace Greeley for the Presidency by a political organization which for a lifetime the *Tribune* editor had vigorously denounced — the Democratic Party.

A special treat it was to listen to Mr. Washburne when he spoke of the siege of Paris, of the scenes of which he had been a daily witness, and when he told of the appalling events that followed the surrender. The name of this eminent man is forever associated with that remarkable chapter in the history of France. It will be recalled that, upon the outbreak of hostilities, the archives of the German Embassy had been turned over to the American Legation. At Bismarck's request, and by permission of the French Government, our Minister furnished protection to Germans who could not leave the city. The undertaking threw upon Mr. Washburne and his secretaries an enormous amount of labor. Most of the Germans to be cared for were laboring men and women. In great throngs they filled the Legation and the surrounding streets, all eager to secure passes, or

to receive aid in some form that would enable them to leave France.

Minister Washburne, however, proved himself equal to the task. The efficient and kindly way in which he performed his daily labors won for him a world-wide reputation. It was the combination of good judgment and broad humanity that enabled him to go through with this work in a manner to gratify both nations. But if Mr. Washburne displayed an extraordinary capacity, while the French capital was under siege, in dealing with troubles of this nature, all the more did his wisdom and courage come to the front upon the capture of the city, and the committing of fearful excesses by the Commune. The service afforded to the unfortunate Darboy, Archbishop of Paris, by the representative of the United States, forms a part of the pathetic story of that martyrdom, to be held in lasting remembrance. Rarely has it fallen to the lot of an American diplomat (if indeed it has ever before occurred) to reap a harvest of well-doing such as was vouchsafed to Mr. Washburne.

The comfort of our American party, while engaged for months at work in Paris, preparing for Geneva, was studied by Mr. Washburne; and every one of us was indebted to him for personal attentions unsparingly rendered. We were, one and all, grateful to him, and to the secretaries of the Legation, for what they did so constantly and so graciously in our behalf.

It is worthy of special mention that Mr. Washburne took frequent opportunity to enjoy the society of Mr. Cushing, of whom he has said: "I have never known a public man in the United States of such wonderful and varied accomplishments." [1] In return, Mr. Cushing, in ample form, evinced his appreciation of these attentions. Just as he was leaving Havre, to sail for home, he wrote to Mr. Washburne a graceful letter, under date of 4 October, 1872, in which, not by way of compliment, but with genuine feeling, he says: —

"The many opportunities I have had, during the last nine months, of intercourse with official and other persons of Europe, of different nationalities, have enabled me to appreciate thoroughly the preëminent ability and signal distinction which you have manifested in the difficult post of Minister of the United States." [2]

Mr. Washburne feelingly observed that he considered this one of the highest compliments he had ever received.

Many prominent members of the American colony resident at Paris interested themselves to make our stay agreeable. Among the number it may be mentioned that Mr. Eliot Cowden, and the bankers, Mr. Munroe and Mr. Andrews, were particularly considerate and hospitable in their social attentions. A reception and ball given by Mr. and Mrs. Andrews was brilliant in a marked degree. Travellers

[1] *Recollections of a Minister to France* (1887), vol. I, p. 273.
[2] *Ibid.*, p. 274.

of distinction from the United States, passing through Paris, took occasion to pay their respects to the Agent and Counsel. Rear-Admiral Alden, commanding our squadron in European waters, and General Sickles, were among the callers. Mr. Thomas H. Dudley, who had been the very efficient Consul of the United States at Liverpool during the war, came to Paris in order to consult with the Counsel. He was of Quaker birth, — a man of grave exterior, whose demeanor indicated how completely absorbed he was in the steps now being taken to right a wrong committed in spite of his most earnest protests. The verbal explanations he was able to communicate must have been of material value, in the arrangement and statement by Counsel of the facts respecting the escape of the Confederate cruisers. A little later in the season, that most delightful man, General Schenck, our Minister at London, came over to Paris, and was in frequent conference with Mr. Davis and the Counsel.[1]

[1] M. Desmarecq, a French artist, had been engaged at Paris upon a painting of considerable pretensions for some public building, I think the Signing of the Declaration of American Independence. Mr. Evarts visited his studio. As a descendant of Roger Sherman, Mr. Evarts considered that he could impart freely his advice as to the proportions and look of that historic figure. So felt and so did General J. Meredith Read (our Consul-General) with regard to his distinguished progenitor, George Read, whose face appeared in the group. When later another American of distinction was brought to view the work, and was announced as the Minister to England, the artist upon presentation quickly enquired, "Had monsieur an ancestor there at the signing?" "None whatever," said General

Next after Minister Washburne, the American who was most actively engaged in looking after our wants was Doctor Thomas W. Evans, who for years

Schenck. "Thank God for that!" ejaculated the artist, with an air of relief. Curiously enough, it had befallen this artist, on another occasion, to be brought into relation with a descendant of Roger Sherman in amusing circumstances; and it may be permissible for me to append the following extract from an interesting volume of reminiscences, by the late General John Eaton, recently published, and entitled *Grant, Lincoln, and the Freedman*: —

"I once had occasion," says General Eaton, "to escort a French painter of some celebrity through the War Department in Washington. He had been commissioned by Napoleon to find a subject for an American historical painting, to be placed, I believe, in the Opera House in Paris. . . . To West Point the French artist — whose name I think was Delamarque — was especially anxious to go, and I had taken him to the War Department in order to facilitate matters for him. I had presented him to the Secretary of War and secured letters for him to the authorities at West Point, when, just as we were about to leave the building, we discovered that it was raining so hard that we drew back to wait for the shower to pass. It occurred to me that General Sherman's office was just at our right, and without forewarning my guest, I threw open the swinging door and we went in. It was a cruelly hot day, and General Sherman was seated at his desk in his shirt-sleeves as hard at work as any of his clerks. He recognized me over his shoulder and called out in his hearty way, 'How are you, Eaton?' I responded and at once presented M. Delamarque. The Frenchman's amazement on hearing Sherman's name got the better of his breeding, for he threw up both hands and exclaimed quite frankly, — and in English, — 'Oh, my God!' When the rain abated we went on our way, the Frenchman discoursing volubly on the astounding simplicity and lack of ceremony which he had found in our great men, — among whom President Grant and General Sherman had especially impressed him, for even the shirt-sleeves had not disguised from him Sherman's native forcefulness and grace." (Page 311.)

had enjoyed a reputation throughout Europe as the head of his profession of dentistry. He had gained fame in two continents by having effected the escape of the Empress Eugénie, whom he had personally accompanied from Paris and landed safely in England.[1] Doctor Evans busied himself to facilitate the means of carrying forward our work. He placed at our disposal very convenient rooms, in the upper story of a building in the Rue de la Paix (at number 15), a few doors from Hotel Westminster. In this service the Doctor's assistant, Doctor Edward A. Crane, was an efficient helper. I recall with pleasure the fact that he was particularly liked by the secretaries.

To these quarters Mr. John Davis brought boxes

[1] The temptation is too strong to be resisted; and I must relate an incident which everybody in Paris heard of at the time of its occurrence, but which perhaps may prove to be new to readers of a younger generation. It is a part of the *ana* of the Geneva experiences.

At a large dinner-party, in Paris, during the season which is engaging our attention, Dr. Evans talked a good deal about this or that royal personage, and by way of displaying the easy footing upon which he had conversed with each in turn, he recited remarks such as only intimates are in the habit of exchanging. Mr. Evarts, who was seated at the other end of the table, observed how undue was the proportion of importance that this individual guest had assumed. Leaning forward, and speaking in that smiling, half-quizzical manner that betrayed his own keen enjoyment of the bright saying that was about to be uttered, Mr. Evarts remarked: "Well, Doctor, we certainly owe you a debt of gratitude. For us it is a great thing even to *see* a king or prince; but it seems that they all have opened their mouths to you."

of papers, that had been sent over by the Department of State; and the conveniences for clerical work were promptly secured. Mr. Evarts and Mr. Waite chanced not to be in Paris when we arrived, but they came soon afterward. With the former were Mrs. Evarts, the Misses Evarts, and the younger children, Louisa and Maxwell. With Mr. Waite were Mrs. Waite and Miss Waite. Mr. Evarts took apartments in the Avenue Joséphine, while the Waites retained rooms at the Hotel Westminster. Mr. Cushing, after a brief sojourn at that hotel, removed to a small and convenient house in the Rue Galilée near the Legation, in the neighborhood of the Arc de Triomphe. Mr. John Davis and I later took lodgings at the Hôtel des Etrangers in the Latin Quarter.

On 16th February Mr. Cushing and Mr. Beaman went to Versailles, where they paid their respects to M. Grévy, President of the Assembly. I was of the company; and I remember that the visit was in every respect enjoyable. In the afternoon I sat awhile in the gallery of the Assembly, where the debate seemed to be stormy. Among the distinguished men I saw there I recall General Trochu. Later in the season Mr. Cushing called upon M. Thiers and M. Guizot; and we younger men met socially one or two members of the Corps Législatif, Jules Ferry I remember as being among the number.

By a provision of Article IV of the Treaty, the Counter-Case and additional documents, corre-

spondence, and evidence of each party had to be delivered to each of the Arbitrators, and to the Agent of the other party, within four months after the delivery of the Case. This meant that our Counter-Case should be ready for delivery before the 15th of April, 1872. The Counter-Case was designed to afford the means of replying, in the nature of a plea, to the Case. We did not know in advance what would be the terms of the British Case, although we could make a fairly good guess, taking the original correspondence carried on at the time between the two Governments as a guide.[1]

As soon as the three Counsel had come together, at Paris, they united in requesting the Agent of the United States to prepare the Counter-Case. This work, after full consultation with them, Mr. Davis

[1] It so happened that Great Britain may have gained an advantage over us as the result of an accident. One of the American counsel, soon after his appointment, came to Washington, and visited the Department of State, for consultation with Secretary Fish. Upon leaving the building, he carried away a copy of the Case of the United States, a secret document to be most carefully guarded. As luck had it, however, when the carriage was driven up to the hotel, this copy was missing; it had dropped into the street. Search was in vain. Somebody found it who, knowing its value, took the precious document to the British Legation, and there disposed of it, it is understood, at a bargain. Thence it is supposed to have promptly found its way to London.

No harm can now come of the disclosure that the distinguished advocate who visited Secretary Fish upon that occasion himself subsequently became Secretary of State. A few persons in the secret at the time of the mishap would rally the eminent lawyer as "a counsel who had lost his Case before he had opened it."

consented to perform. It meant a vast amount of clerical labor to be expeditiously accomplished. Mr. Davis knew just how to set about the task. The means, at that day, of quickly putting text on paper, and multiplying copies, were rude. In fact, the only process that we could resort to was writing with a prepared ink upon foolscap sheets, and taking the inscription off upon stone. This lithographic method, from the establishment of Chauvin, Rue de la Vieille Estrapade, was adopted. The finished product, when bound in two volumes, showed a variety of handwriting, but all of it, I am bound to say, was fairly legible.

Mr. Davis organized a force consisting of Mr. John Davis and Messrs. Hackett, Peddrick, and Waite, and we went to work with a will under the superintendence of Mr. Beaman. To us was added Mr. Henry Vignaud, of New Orleans, an accomplished translator, who later became Secretary of Legation. He was then private secretary of Mr. Washburne. Mr. Vignaud translated the Counter-Case into French. Mr. George Merrill, an American lawyer residing at Paris, had already superintended certain translations into French, from the evidence accompanying the Case, — two volumes that were printed by the 8th of April.

Mr. Beaman was usually present, himself working harder than anybody else. Occasionally we labored well into the night, — once until three o'clock in the morning.

We liked to serve Mr. Bancroft Davis, for though he expected a good deal to be accomplished, he never failed to speak a generous word of appreciation. Frequently he came to the rooms. Our progress was rapid. Before long the cheerful assurance was ours that the documents would be ready in good season.

Invitations came to us plentifully, some of them to artistic or musical circles, where we gained glimpses of French society. One evening, I remember, I met Gustave Doré, who must have been amused at my attempt to convey to him (in French of a quality peculiarly its own) a conception of the enjoyment I had experienced not long before in looking over his illustrations of Dante, while I was tarrying beyond the Mississippi. An entertainment given at the Grand Hotel in furtherance of the popular subscription movement for raising money to pay off the indemnity to Germany was unique. The room was packed. It was a gathering aglow with patriotism. Never had I witnessed elsewhere, it seemed to me, so profound and united a demonstration of love of country. At the Lenten season I heard the "Stabat Mater" magnificently rendered at the Church of Saint-Roch, in the Rue Saint-Honoré. I can recall, too, a delightful musicale at the Salle Erard.

As for sight-seeing, I did not fail to make a beginning upon the round that my red-covered Galignani had prescribed for the well-regulated tourist. This

guide-book, I may explain, took Paris solemnly. Its didactic pages impressed upon me, at all events, the impropriety of leaving the French capital without first having diligently looked at all "the objects of interest." One excursion, that to-day is, I dare say, permissively dropped from the list, consisted of a visit to the Catacombs. Our little party, headed by Messrs. Cushing and Waite, went to a street aptly named "Rue d'Enfer"; and thence, candle in hand, descended by circular stairs — as though going down cellar — for, I should imagine, about two hundred feet. Though the passages through which we were led were scrupulously neat, and though evident pains had been taken to arrange skulls and bones in an artistic fashion, the effect, it must be confessed, was not exhilarating. I found satisfaction in the thought that the visit was not of my own planning

As for the theatres, I must admit that the backward state of my intimacy with the language proved to be a very considerable drawback. However, I found pleasure in going rather frequently to the Comédie Française, having usually read the piece beforehand. While I could not but lose much at certain points, I was yet able to enjoy keenly the ineffable charm of the acting. On the evening of the 10th of April, the performance took on a special meaning, for the reason that it was given for the benefit of the Director, who was retiring from his post, after forty years of service. The proceeds

amounted to eighteen thousand francs; and the good man besides this sum was to receive thenceforth a handsome pension from the State.

The most striking play that I remember to have seen at any other theatre was "Rabagas," by Sardou, — a drama alive with stirring political activities, in which the leading part was rendered by an actor of wonderful talent. The piece had a very long run.[1]

In fifteen days (so speedy was our work) the manuscript of the Counter-Case, and of the accompanying documents, had been prepared and put into the hands of Counsel. By the 12th of April, it was printed and bound, ready for the Agent to take to Geneva. Mr. and Mrs. Davis left Paris on that date. It had been arranged that the Agents and the Secretary should be at Geneva on the 15th, where they would exchange the respective Counter-Cases without requiring the presence of the Arbitrators to receive their copies. General Cushing and Mr. Bea-

[1] It may be of interest to give here the names of the guests at one of the dinner-parties of that season. I do so with less scruple, because the host was an official, — the Consul-General of the United States for France, — General John Meredith Read, of Philadelphia.

There were present (2 April) at his residence in the Avenue d'Antin, General Schenck, M. Léon Say (Prefect of the Seine, soon to become Minister of Finance), General Cushing, Mr. Waite, General Butterfield, General Woodhull (Secretary of Legation, London), Mr. Beaman, Mr. Philip Stanhope (son of Earl Stanhope), Mr. Tiffany of Baltimore, Mr. Warren of Troy, New York, Mr. Johnson, and Mr. Hackett.

man also went to Geneva, but by a different route from that taken by the Agent.

The Counter-Case of the United States was delivered at Geneva, on the 15th of April, to Mr. Favrot for the British Agent and for the Arbitrators.[1]

Mr. Davis says of the British Agent, at this meeting, "Lord Tenterden met me at Geneva in April with unreserve and in the spirit of conciliation."[2] The remark, and what followed of Mr. Davis's report, was significant because, early in February, a storm had broken forth in England, and continued to rage, so as to threaten the disruption of the Treaty. The "indirect claims," and the excitement that took possession of England because of their inclusion in the American Case, will form the subject of a later chapter.

On the 13th of April, I left Paris by an early morning train, the bearer of despatches to our Legation at London. I took with me a copy of the Counter-Case, and accompanying documents, to be delivered to our Minister, General Schenck. The day was charming. This being my first visit to England, I enjoyed every moment of the journey. In a

[1] "The volume of evidence accompanying the Counter-Case was selected and arranged under the directions of the Counsel. At the same time I delivered French translations of selected pieces from the seven volumes of evidence submitted with the Case in December." Davis's Report to Fish (21 September, 1872), *Gen. Arb.*, vol. iv, pp. 5, 6.

[2] *Ibid.*

sense I looked upon my mission as a kind of sortie into the camp of our opponents, though conscious of not a particle of hostility to our "English cousins," except officially on paper. I wanted to see them on their own soil.

The purely personal experiences in London of a single younger member of the American party are perhaps of no particular consequence. Yet some of the notes, jotted down at that time, may at this late day possess value, seeing how extensive have been the changes in that great city since the year 1872. I may be permitted, therefore, to draw upon these notes as at least telling what was happening to one of the party during the breathing-spell of the few days' cessation of clerical work, before entering upon the duty of taking down at dictation that portion of the Argument assigned to my chief.

What is peculiar about crossing the Channel is — that it is a bundle of deceptions. This time the sea was as smooth as glass, whereas we had made arrangement for two hours of wretchedness. Again, it may at starting be as quiet as you could wish, and five minutes later you are fortunate if you are not wet through. The harbor of Calais is shallow, consequently the boats are of light draft, and absurdly small. People are huddled together in a style that would be ludicrous, were it not for its serious aspect. Our steamer, which wore a jaunty look from her raking, white smoke-funnels, was under command of

a French captain; and the crew of the same nationality displayed true French politeness, for whenever a sailor had occasion to come in the way of a passenger, to disturb him in the slightest, the act was prefaced with a "Pardon, Monsieur," — a little thing, but noticeable.

When we got in at Dover pier, we could look up, forty or fifty feet, and see a crowd of people staring down at us, men, women, and children, with here and there the red uniforms (their caps cocked to one side) of privates in Her Majesty's service. The arrival of the mail at Dover must be an important event, so many persons feel it a duty to be there to attend to it.

Dover Castle, whose walls occupy thirty-five acres, looked as though it might interest a visitor for an hour or more. The cliffs at Dover are wonderfully high, steep, and white. As the sea was running somewhat boisterously, the effect of the cliffs as a background was beautiful, not to say striking. One I note is called Shakespeare Cliff. An ocean steamer was passing, flying the German flag, and I could not help thinking of the lines in *King Lear* and applying them to the bigness of her hull.

The railway carriages, which are substantial and tolerably comfortable, are divided into first, second and third class. As I got in at Dover pier, I secured a seat for London, first-class. The carriage interior was furnished in heavy brown wood, with black cushions. The other occupants of the carriage were

an old gentleman, his wife, or perhaps maiden sister, a possible sister-in-law, and a third of that sex, whom I took to be a lady's maid. The old gentleman might have been rising seventy. He was dressed in black. He wore a silk travelling-cap and a pair of gold-bowed, aristocratic-looking spectacles. A newspaper which he held in his hand was, of course, the *Times*. My new-found friend was the picture of comfort. He appeared contented and at peace with all mankind. He did not grumble at anything, nor did the good lady beside him; she sat and smiled vacantly out of the window until the guard locked the door, when she took occasion to exclaim, "Ah, there they go locking us in, like so many cattle,— we've got back to that system now."

The country through which the train ran was pretty,— most of the estates divided by hedges, about as high as a man's shoulder, houses tiled in red, or thatched,— a few houses standing by themselves, but most of them grouped in villages. The road crosses the highway by bridges, above or below it, never at grade, and so the whistle is sparingly used. Pedestrians are to be seen walking down the smooth, narrow roads,— lanes with high walls of stone or hedges of green, twisting around unexpected corners. Women and children, and some men, picking hops, stand quietly and look at the passing train. A group of children cheer, just as they sometimes do in America, as though there were any particular merit about us; but then perhaps they

would not have cheered a freight (or as the English call it, I believe, a merchandise) train; so we may take it to be a tribute to us passengers, I suppose, after all.

We were whirled through several tunnels, over a country slightly rolling and not very woody, where there were many hayricks standing in the fields covered with straw, in readiness for the winter. Chiselhurst, a charming spot, to judge from one or two glimpses, brought to mind of course its distinguished occupant, the former Empress Eugénie of France.

My impression is that we did not stop once on our way up to London. The entrance to the city is somewhat abrupt — no clumps of houses doing picket duty, as it were; but right out of little farms and vegetable garden plots, one comes all of a sudden in among the low, uniform, dull-brick tenements, that mean London. The first landmark we made was Sydenham, where the Crystal Palace of the Great Exhibition of 1851 was standing.

You are brought into London on a level somewhat over the tops of houses. These houses are of two or three stories in height, built of brick of a large mould, which originally may have been of dull yellowish brown color, but are now almost black from exposure to the weather. Trains are moving in every direction, and the network of rails is marvellous. We cross the Thames, and run into Cannon-Street Station. As we cross, we see St. Paul's, a grim pile

of black-and-white stone; the Houses of Parliament, with the high square tower, the bridges solid yet handsome, and innumerable vessels in the stream. At Cannon-Street Station a crowd of young men stood in waiting, apparently clerks, just over with the work of the day. Soon a train ran in; these young fellows packed aboard, with full as much hurry as we Americans exhibit, and off they went. They were a sober-looking group, all wearing tall hats, perhaps better dressed, but not so bright-looking, I fancied, as a collection of young men similarly employed in the United States.

Then we backed out, and three or four minutes served to bring us around to the station at Charing-Cross. Cannon-Street Station is nearer "the City," so called; that is, the Bank of England, the Exchange, and the great business portion of London. Charing-Cross is at least a mile to the westward, and is laid down in your guide-books as the focus whence radiate all the lines of travel over London.

After a short, and apparently a meaningless, examination of baggage, I was free to go, and I walked into the Charing-Cross Station Hotel. The establishment, of course, was thoroughly English, that is to say, it was not like our American hotels. The "bar," as it was termed, answers in some measure to what we at home call the "Office." It is spacious, and two or three women do the work of clerks,—keep the keys of rooms, the accounts, and what is more, a quantity of liquor, that can be ordered in

the coffee-room. A bright fire burns inside the bar, in cold months; and a pot, of goodly size, holds warm, or rather hot, water, for the preparation of such beverages as require it. The bar has a cosy, comfortable look. Some of the rooms, especially large and desirable front rooms, are not numbered but named, such as "The Sun," "The George," "The Kent," etc. "Put a fire in 'The Sun'" now becomes intelligible. At the head of the first flight of stairs, I observed another retreat, somewhat resembling the bar, where a huge copper cylinder was kept furnished with hot water, heated by means of spirit-lamps.

The Strand is a street that many a visitor to London first sees. It appeared to have no architecture to boast of. It is a street of ordinary width, crowded with buildings, three or four stories in height, and by no means imposing. The shops are not deep, and in many cases the windows are not modern. The street is somewhat crooked, and the sidewalks, of flagstones, are none too broad. The stories over the shops would appear to be used as dwellings.

Passing a narrow arch that looked like an obstacle, with no claim to usefulness or beauty, called "Temple Bar," [1] you get into Fleet Street, where

[1] "We now arrive where (till 1878) Temple Bar, black and grimy in much sooty dignity, ended the Strand and marked the division between the City of London and the Liberty of Westminster. . . . The last stone was removed June 14, 1879." Hare's *Walks in London* (1901), vol. i, p. 52.

are numerous offices of those newspapers and magazines with which almost every reader is familiar. Here, too, is the office of the enterprising New York *Herald*, whose manager, Dr. Hosmer, informed me that they paid more for special telegraphing (as nearly as I can remember) in one month than all the press of England in a year.

The omnibuses are legion. There are two seats on either side of the driver, who is always a hale, hearty fellow. One old party, with a bottle nose, told me that he drove sixteen hours a day, and he looked very much as though he was satisfied that I believed him. The driver is provided with a big rubber coat, which the conductor slips over him when it begins to rain. There is also an immense boot for his further protection, labelled "London Omnibus Directory." The conductor stands on a little platform, about halfway up the side of the door, on the left, as you get in. Here he can look ahead, over the top of the coach, and yet be ready to help a passenger in. He cries out in a loud voice the route of his 'bus, and is, for every moment, on the watch for passengers. There are also seats outside, running lengthwise, on top of the 'bus. The horses appear to be kept in good condition, though I think they are not so stout as those of the Normandy breed. In Paris, curiously enough, most of the horses upon omnibus lines are white. I noticed no such peculiarity in London. The law of the road in England (in Scotland, too) is to keep to the left.

We went by hansom to the Exchange. It rained fast, so London was in its element. Nobody seemed to mind the rain; it did not interfere with business or even pleasure, that I could see. Every one looks for it, and prepares himself accordingly. Rubber overcoats appear as suddenly as the showers do; and you see the occupant of a cab adjusting his garment quietly over his shoulders, in a mechanical way — thinking probably of business, or of where he is going, or of anything else than of the weather. A Londoner and his umbrella are inseparable. If he is in a cab, he uses his folded umbrella as a kind of rudder to the craft, by sticking it up, to the right or left, so as to indicate to the man aloft the direction in which to drive.

I gained a piece of information as to architecture, while riding on the top of a 'bus. We were passing Somerset House, when one of the passengers, who somehow had discovered that I was from "the States," turned to me, and, pointing to the large front of those buildings, remarked in a quick, nervous tone, "Just like Chick-a-go." I must have looked not a little puzzled, for he repeated the remark two or three times, "Like Chick-a-go, — built on piles, you know!"

The streets, narrow and crooked most of them, are by day crowded with pedestrians, though somewhat deserted at night. At the Exchange is beheld one of the busiest sights in the world. Eight important thoroughfares centre here, all pouring in an endless

throng of foot-passengers, and of carriages, from cabs, omnibuses, and lumbering wagons down to miniature two-wheeled carts, drawn by the smallest of donkeys. At times you will see a funeral threading its way through a maze of vehicles, — a hearse, high, and adorned with huge black plumes, hired mourners, with a yard of crape for a hat-band, and stately carriages, to the number of half a dozen, covered with the gloomiest black cloth imaginable, — the whole affair a striking contrast to the bustle and activity of the surroundings.

In a sweeping fashion one is tempted to remark that London externally has little about it that is attractive. The houses, for the most part, are of brick, once yellowish, now of a greenish, brown or black, — most of the facings of a dingy hue, that began by being of a cream color. Some houses have stuccoed fronts, of a like yellowish tint, which affords a slightly gayer appearance than plain brick. Substantial buildings they are, that look as though they mean to last, — of three or four stories ordinarily. The shops, as I have already said, are not deep. Many of the windows are bowed with sills high from the ground, like windows that were old-fashioned in New England when I was a boy, and have long since disappeared from there.

Street names (which are important signs for the traveller) are painted in bold, black lettering, on a large yellowish ground, at the corners. Gas-posts are high and strong, with no suggestion of ornament.

Fences around the parks have been put there as if not to be disturbed for centuries. There are no cellarways, but numerous "areas." Doors have two bells. On the right, one is labelled "visitors," on the left, "servants." Sidewalks are mostly of flagging; and in front of each house you will find a grating over a coal-hole. Roofs are tiled or slated, with here and there, on a lately constructed building, a French mansard slated roof.

Workmen wear no distinctive dress, as that of the blue blouse in Paris. Every crossing that is much used is likely to have a poor-looking object, in the shape of a man, at work,—or rather you seldom chance to see him actually at work, for there is n't much to do, sweeping away the mud or dirt,—and he never fails to extend a hand for small change. Street-begging is not forbidden; and thinly clad, miserable-looking women will be seen, many a one carrying an effective baby.

Oxford and Regent Streets have the finest shops. Just off Oxford Street, and in streets parallel to it, you will come upon squalid wretchedness. One is struck with the recurrence of signs of outfitting-establishments, and of the many trunk and valise shops, so that it seems as if all England were doing nothing but travel. Certain shops have outfits for India. Many a dealer, no matter in what, who aspires to be somebody, is under the patronage of the Royal Family; and a certificate from the proper officer is framed and placed in the window to attest

that inspiring and highly important fact. One man, in Regent Quadrant, caters to Americans, by advertising his saddles and bridles, in great letters on his windows, "To the President of the United States," — and certainly General Grant is a good judge of the set of a saddle.

Having safely delivered the despatch-bag at the Legation, I was for a day or two free to look about London. A dinner at General Schenck's afforded me the pleasure of meeting the Misses Schenck, who kept house for their father in Great Cumberland Place, Hyde Park. It needed little discernment for me to note how admirably the young ladies were fitted for the responsible position of socially representing their country in England. All three exhibited a sprightly wit, and a familiarity with what was going on in political and diplomatic circles. Cultivated and resourceful, each must have proved herself a real helper to the Minister, at a time when important social duties called for the exercise of unusual judgment. As for the Minister himself, it is enough to say that no one who had ever come under the charm of his conversation was likely to forget it. General Adam Badeau, military attaché of the Legation, — a soldier and an author, — was also a guest. He had been on General Grant's staff; and his biography of Grant was a book much read in its day.

That my brief stay in London was so pleasurable

was largely due to the attentions of General Maxwell Woodhull, Secretary of Legation, a young man of many attractive qualities. He had served on the staff of General Schenck during the war; and was, I believe, the youngest soldier in the Army to have the rank (brevet) of brigadier-general. He took me to the Club, and most good-naturedly accompanied me in some of my sight-seeing trips.

In the House of Lords I listened to a speech from the Lord Chancellor (Hatherley) upon a bill proposing to abolish the right of appeal to the House of Lords. He spoke in a hesitating manner. Of Lord Cairns and Lord Granville, all that I can rescue from my meagre diary is the fact, for what it may be worth, that each had red hair. I saw Mr. Gladstone in the Commons, and Mr. Disraeli. As was natural for a young lawyer, I visited the courts, though I confess it was done after rather a hurried fashion.

Mr. John Davis having joined me in London, we returned in company to Paris. Our headquarters in London, I should have stated, were at the office of the Despatch Agent for the United States, Mr. B. F. Stevens (1833–1904), at 17, Henrietta Street, Covent Garden. I remember Mr. Stevens well, for he was obliging and attentive. He came from Vermont, and had lived in London for many years. I found his conversation unusually interesting, — particularly about books.[1]

[1] When a small boy it was the height of my ambition to cross the

Our Legation, I may add, was at number five, Westminster Building, Victoria Street. I made there the acquaintance of Mr. Moran, First Secretary, who had long been in the diplomatic service, and who later became Minister to Portugal. Davis and I left Charing Cross, at seven o'clock in the morning of the 19th, crossed in the *Petrel*, — the Channel a little rough, — breakfasted at Calais, and at six o'clock in the afternoon we were being driven in a cab through the streets of Paris, now become familiar. It seemed as if we had reached home.

Making what he described as a pleasant trip, Mr. Cushing, on the 20th of April, returned from Geneva. It was now in order to proceed with the preparation of the Argument, which under the terms of the Treaty had to be ready to be laid before the Tribunal by the 15th of June. For a while, however, work in this direction was suspended, because it looked as if the Arbitration itself would never take place.[1] A period ensued when there was little to do. The delay had the result of doubling the volume of work for the month of May, when I was frequently at the desk, to begin the day, as early as six o'clock in the morning.

ocean, go to London, and visit the Thames Tunnel, — then reckoned one of the wonders of the world. In 1872, I had forgotten all about it.

[1] In a later chapter we shall see what an extraordinary excitement prevailed in England over the "Indirect Claims"; and how their inclusion in the American Case came perilously near breaking up the Treaty.

My chief commanded a marvellously large vocabulary, nor was he ever at a loss for a word to express himself with precision. He was at home in several languages. He spoke Spanish in its purity. French he knew thoroughly, and he had been in the habit for years of constantly speaking it. Now he availed himself of a fresh opportunity to improve his accent. Accordingly, one of the first things he had done, upon settling down in Paris, was to secure the attendance of a rising *avocat*,[1] a highly cultivated young man, who used to pay a visit each morning and engage in an animated conversation, chiefly upon the topics of the day. By this means Mr. Cushing not only derived benefit as from what might be called a "dress rehearsal," but got in touch with a good deal that was going on in law and politics, and learned what young France thought about it.

The Argument of the United States at Geneva was a composite work — each Counsel having taken it upon himself to contribute certain chapters. To Mr. Waite fell the duty of setting forth the facts with regard to the building and the escape of the cruisers, their depredations, and the treatment accorded to their commanders in British colonial ports. The simple terms in which Mr. Waite has told the story, in chapters six to ten inclusive, are a credit to his skill as a writer.

[1] M. Mir, now and for some time past, a member of the French Senate, representing the Department of Aude.

Those who are familiar with the style of Mr. Evarts can easily detect the portions of the Argument furnished by him. The first and second chapters are his, entitled "Introduction" and "The Controversy submitted to Arbitration." The opening sentence of the latter chapter contains ninety-seven (97) words; the second sentence no less than one hundred and two (102). Mr. Evarts always presented his thoughts in a lucid form; his reasoning was forcible in spite of a predilection for sentences of extraordinary length.[1] He likewise is the author of the eleventh chapter, "Consideration of the Duty of Great Britain, as established and recognized by the Treaty, in regard to the offending vessels, and its failure to fulfil them as to each of said vessels." The twelfth is to be credited to him, "The Failure of Great Britain to fulfil its duties as established and recognized by the Treaty, considered upon the Facts."

Mr. Evarts wrote as he spoke, fluently, and with animation, — the piece was always impregnated with thought. In his day it was the opinion of the Justices of the Supreme Court of the United States that no lawyer, of those accustomed to try causes

[1] "With regard to the translations of some of our documents, I may mention that I got so much entangled in one of Mr. Evarts's long and obscure sentences that I had to tell him it could not be put into French; to which he coolly replied, 'That shows the poverty of the French language.' He amended the sentence, however, but did not make it more clear." MS. Letter of Henry Vignaud, 19 September, 1907.

before them, was listened to with greater deference, or was more persuasive in his argument, than this distinguished leader of the New York Bar. Mr. Evarts's knowledge of international law and diplomatic precedents could not be said to be extensive or profound. This was a field in which Caleb Cushing was a master. But the New York advocate found himself perfectly at home in the region of the common law, and in that of American constitutions and statutes. It is sufficient to say of his share in the Argument that it was worthy of his great reputation.

To Mr. Cushing, the Senior Counsel, was entrusted the preparation of the third and fourth chapters, together with two subdivisions of the important closing chapter (the thirteenth) upon the nature and amount of the damages to be awarded. The third chapter is entitled "General Discussion of Questions of Law"; and the fourth "Miscellaneous Considerations." The reader meets with no difficulty in recognizing Cushing's style, — strong, forcible, hurrying on impetuously from one crisp statement to another, — at some places discharging a perfect volley of sharp, stinging sentences. Throughout there prevails a tone of confident assertion.

Cushing cherished a cordial dislike for certain phases of the English character, and of this feeling he made no secret. In the freedom of familiar talk, when referring to Englishmen he was accustomed to speak of their "insular prejudices." He purposely

landed in France, and when he took passage for home, it was from a French port. He firmly believed that the British Government were by design hostile to us during our troubles, — believed that they hoped to see the Southern Confederacy victorious. Thus convinced, it was not at all strange that the feeling which this belief aroused should have made itself visible in the tone and color of the chapters contributed by him to the Argument. At least one passage (and there may have been others) in the original draft was of a temper so pronounced that Bancroft Davis was moved to suggest an expression that should be a little more discreet, a change which Mr. Cushing with the utmost good-nature at once effected.

A single quotation will suffice to show how plainly Mr. Cushing asserts what he believes to have been the truth as to procedure on the part of high officials. Speaking of the practical inefficiency of the Foreign Enlistment Act of 1819, he avers: —

"The same insufficiency manifested itself in the legal proceedings in the case of the *Alexandra* in such degree as to throw contempt and ridicule upon the whole Act. Quibbles of verbal criticism, fit only for insignificant things of mere domestic concernment, pervaded the opinions of the great judges of England in a matter closely affecting her international honor and foreign peace. It needs only to read the report of this trial to see how absurd is the hypothesis of the English Case and Counter-Case, in arguing that any question of peace and war,

between Great Britain and other Governments, is to be determined according to the provisions of that Act, and that in such a transcendent question the British Ministers are under the necessity of floundering along in the flat morass of the meaningless verbosity and confused circumlocution of any Act of Parliament." [1]

Let it not be thought, however, that this eminent lawyer was so constituted that he could not justly appreciate the greatness of England. In fairness to Mr. Cushing I may anticipate a little and quote an eloquent passage from his supplementary argument:

"I honor England. The substance, and even the forms of the institutions of the United States are borrowed from the mother-country. We are what we are, first of all, because we are of British race, language, religion, genius, education, and character. I have studied England at home, in her Colonies, in her establishments beyond the seas, and, above all, in her magnificent Indian Empire. She is rich, great, and powerful as a State, not, in my opinion, because of the subjection of her Ministers to the scrupulous and daily criticism of the House of Commons, but in spite of it, as I remember to have heard said by the late Lord Palmerston. It is not the strong, but rather the weak side of her Government, as one sees, moreover, in the present controversy. It is not worth while, therefore, to deny to the Crown executive powers necessary for the peace of the Kingdom; nor, in the present case, to raise cries of arbitrary power, in the face of the admitted omnipotence, that is to say, of the absolute despotic power of Parliament, whose real force tends every day to

[1] *Gen. Arb.*, vol. iii, p. 28.

concentrate itself more and more in the House of Commons alone." [1]

The second subdivision of the thirteenth chapter, entitled "Questions of Jurisdiction," was the work of Mr. Davis. It treats of the vexed subject of "National," or, as preferably styled in England, "Indirect" Claims. This portion of the argument is clear and forcible. It demonstrates the soundness of the position that the Tribunal were fully empowered by the Treaty to entertain and pass upon claims of this nature.

We had hardly begun in earnest to get to work upon the Argument when obstacles presented themselves to our having the printing in English accurately and expeditiously done. In order to dissipate our fears lest the books should not be printed, bound, and ready for delivery upon the date stipulated, Mr. Davis found it necessary to resort elsewhere for help. He accordingly despatched Mr. John Davis to London, in search of competent printers. That energetic young man returned promptly and brought with him a squad of English compositors. The novel importation was regarded by the French printers with perfect good-nature. Indeed, so far from exhibiting any displeasure, they met the Englishmen with demonstrations of welcome, cheering them as they appeared upon the scene. Finally, all was ready, — the Argument, signed "C. Cushing, Wm. M. Evarts, M. R. Waite,"

[1] *Gen. Arb.*, vol. iii, p. 498.

was handed by Counsel to the Agent on the 10th of June. With this action, the work prosecuted at Paris came to an end.

The complete text of the Argument, together with an Appendix, made a volume of five hundred and sixty pages. The elucidation of the several points is thorough, and the reasoning direct and cogent. To the lawyer or the publicist it remains a production that repays a careful study. It may be pronounced in every respect worthy of the great cause in which it aimed to illuminate the minds of the Arbitrators. "This Argument," says Mr. Davis, "has attracted great attention throughout Europe, and has received universal praise as a masterly vindication of our rights."[1]

[1] Report to Mr. Fish, 21 September, 1872, *Gen. Arb.*, vol. iv, p. 6.

## CHAPTER V

### THE PLEADINGS: CASES AND COUNTER-CASES

HERE we may pause to consider briefly what may be styled the pleadings in this great international lawsuit. Although involving an issue of profound significance, the field of contention was after all not extensive. If one examine closely the Case and Counter-Case of the respective parties, he will discover that the complaint and the defence are each capable of being brought within a comparatively narrow compass. When later we shall view in detail the proceedings at Geneva, and note the persistent but unsuccessful attempts of the Counsel for Great Britain to obtain leave for laying before the Tribunal still further argument than that already filed, we shall observe how far the adoption of the Three Rules in the Treaty served to simplify the issue. It will appear that the one point of the greatest difficulty to decide was the extent of the damages for which England might justly be held responsible. Little doubt could exist as to how the neutral Arbitrators would deal with the charge of neglect on the part of the Government of Great Britain, in permitting the cruisers to escape. As that interesting writer and stout defender of the Confederacy, Captain Bullock, puts it: —

"They [the neutral Arbitrators] perceived, however,

that Great Britain had virtually confessed that she owed both reparation and compensation to the United States by admitting that the '*Alabama* and other vessels' had escaped from her jurisdiction, and by expressing regret for the injury they had inflicted; and it must have appeared to them that all previous contentions to the contrary had been abandoned by Great Britain, and that their only course was to judge between the parties according to the conditions agreed upon between them, and to keep the damages down to a reasonable figure." [1]

The Case of the United States of necessity had to be a story of alleged grievances. The American people were bringing their complaint before a body of impartial listeners. A plain, concise statement was wanted. The narrative required a style easily to be understood, and such as would interest and hold the attention of Arbitrators not accustomed to speak the English language.

Fortunately for the United States, its Agent, as we have already observed, could think and write with unusual clearness. Bancroft Davis's style was both easy and animated. His work bears the mark of a hand practised in the best forms of literary expression. One may be permitted to doubt whether any author of repute could have produced a volume more entertaining had he been commissioned by a publisher to furnish a brief, historic account of those occurrences in the form of a popular sketch. In a word,

[1] *The Secret Service of the Confederate States in Europe* (1884), vol. ii, p. 393.

the American Case is an attractive book to read. In its handy shape, as printed at Leipsic, one may turn over its pages to-day, and read them with the certainty of becoming interested in the lively narrative of the many stirring events of which they treat.

The chief aim of the Case is to set forth the duties which Great Britain as a neutral should have observed towards the United States, and to point out in what particulars she failed to perform those duties. This purpose is accomplished by the use of plain terms. The opening chapters describe the struggle to maintain the Union, the attitude of the British Government towards the United States, together with the circumstances in which the Confederate cruisers were built, and were allowed to go to sea. Lastly, there is a statement of the claims made because of the destruction of vessels and their cargoes, because of the losses of individuals, and the expenditures of the Government; the loss in the transfer of ships from the American to the British flag; the enhanced payments of insurance, and the expenses consequent upon the prolongation of the war, due, it was contended, to the presence of these cruisers upon the ocean.

The Case encountered, as might have been predicted, hostile criticism from the press of England, — the *Saturday Review*, for instance, being specially severe in its strictures.[1] The Earl of Selborne, who

[1] Yet the *Pall Mall Gazette* (in January, 1872) termed it "That exceedingly clear, simple, well-argued document."

as Sir Roundell Palmer conducted the defence at Geneva, writing after the event, said of the American Case: "Its tone was acrimonious, totally wanting in international courtesy."[1] Captain Bullock, of whom it was not to be expected that he should view it with favor, alludes to "the peculiar harshness of tone and the angry spirit which pervades the United States Case." The latter writer, than whom no one has wielded an abler or more vigorous pen on behalf of the Southern Confederacy, speaks of the "somewhat sensational opening" of the Case, and continues: —

"No one can read the Case of the United States and the Arguments in support of it, without perceiving that the chief object was to prejudice the Arbitrators by disparaging the institutions and laws of Great Britain, and by impugning the motives of the British Government, and seeking to cast reproach upon the particular Cabinet Minister whose office it was to administer the foreign affairs of the country. . . . Earl Russell is arraigned before the Court of Arbitration as a Minister who 'evinced a consistent course of partiality towards the insurgents,' and he is charged with specific acts of delay in acting upon the information furnished him by the United States Minister, which, it is insinuated, arose from a friendly feeling towards the Confederate States."[2]

Such criticism as this is not to be wondered at. The Case reflected the views of the lovers of the

[1] *Memorials*, vol. i, p. 229.

[2] *The Secret Service of the Confederate States in Europe*, vol. ii, pp. 301–302.

Union, — views colored perhaps by prejudice, but honestly and inflexibly entertained. It brought to the author words of hearty and grateful commendation from his countrymen in every walk of life, since it had stated the cause of the people of the United States precisely as they would have had it stated. The language employed is simple and straightforward. The tone is neither weak nor conciliatory. The charges laid are expressed in forcible terms; yet the Case, viewed as a complaint brought before a tribunal of justice, cannot fairly be said to be lacking in courtesy.

The charge has been made of late years to the effect that a tactical blunder was committed in virtually accusing the British Government with having been unfriendly to the United States.

Says Captain Bullock: —

"The United States appeared before the Tribunal with all the advantages of a diplomatic triumph in their favour, and could also point to such a plain confession of default on the part of their opponents, as to make it well-nigh certain that the judgment would in the main be favourable to them. It is, therefore, greatly to be regretted that their 'Case' was not drawn up in the friendly spirit which appears to have possessed the Joint High Commissioners in their deliberations; on the contrary, it seems to have been written on the model of Mr. Seward's most acrimonious despatches, bears evidence of pique and irritation, which is strikingly out of harmony with the character of the proceedings, and manifests the purpose throughout to obtain a specific present advantage, and to secure

a pecuniary profit, rather than the desire to found an honourable precedent for the settlement of future international disputes, and to establish new rules for the guidance of neutrals which both England and America could recommend to other Powers." [1]

That the Case clearly manifests the purpose of securing a pecuniary profit, is not to be denied. By the terms of the Treaty the Tribunal was empowered to award a sum in gross to be paid by Great Britain to the United States "for all the claims referred to it." Why should not the Case have manifested the purpose of obtaining a present specific advantage? Individual losers (and they were many in number, as well as an influential body of citizens) would have had reason to complain loudly of their Government, had the United States, in its Case, pressed the claims in a lukewarm manner. Great Britain, when asserting her rights under the Article of the Treaty in respect to the Fisheries, was not at all modest in her demands; in fact, by stoutly insisting on her rights (as she viewed them) she secured an award far beyond a reasonable estimate of what could have been actually due to her.

"A friendly spirit," such as Bullock advises, would have been entirely out of keeping; for he means thereby an easy, conciliatory, half-apologetic way of proffering our claims. It is because they take a superficial view of the situation that the criticism

[1] *The Secret Service of the Confederate States in Europe*, vol. ii, p. 393.

has been heard in some quarters from a few American writers to the effect that Mr. Davis (which means Mr. Fish) made a mistake in demanding reparation in the terms of the Case. The document had to reflect American public opinion, and on that score there surely was no uncertainty. The country (inflamed, it is true, by Sumner's speech, and therefore unduly insistent) meant that the bill presented for damages should go to the farthest extent. Had that speech never been made public, it is not unlikely that the Treaty of Washington would have read differently; and no great trouble would have been met in dealing with the question of the character of the demand for damages.

The truth is, we stood up for our rights at Geneva in manly fashion, and England respected us — secretly liked us, — all the better for it.[1]

[1] In view of the fact that other cases of international arbitration will arise in future, it is well not to dismiss this branch of the subject without a full apprehension of the actual situation of the parties who were to meet at Geneva, and appeal to an impartial Tribunal to decide which had been in the wrong, and to what extent there should be reparation. Two great Powers consenting to submit their differences to arbitration instead of going to war, is indeed a noble spectacle. Such a proceeding is likely to excite a degree of sentiment in the beholder. It is comparatively easy for him, charged as he is with no responsibility, to assume that a "friendly spirit" should at every stage animate the conduct of affairs. This is all very well, but human nature asserts itself, and altruistic methods are not as yet adopted in the settlement of disputes that have grown out of alleged wrongs. A single word of explanation ought to satisfy the critic that, taking the situation as it actually existed in 1871, the management by our Secretary of State of the

The critic of to-day, in order to pass judgment upon the attitude toward Great Britain taken at Geneva by the Agent and Counsel of the United States, should first be sure that he apprehends the nature of the feeling that possessed the American people at that period with respect to the *Alabama* Claims difficulty. Let him bear in mind that a keen sense dominated their minds of what they (rightfully or wrongfully) conceived to have been injuries suffered at the hands of the British Government. He should also fitly estimate the effect wrought upon the loyal North by the actual conduct of Great Britain during the terrible strain of a great war. It is by no means easy for you or for me of to-day to carry ourselves back into the atmosphere of that momentous struggle.

But now that the storm of passion has ceased, we

entire subject of the *Alabama* Claims was both wise and prudent. The more it is studied, the more grateful does our feeling become towards Hamilton Fish and his efficient lieutenant, Bancroft Davis.

We were obliged to speak of the attitude of those who during the war were in power in England. We had to tell what seemed to us to be the plain truth. Nobody was going to be convinced that England had been heartily in favor of our putting down the rebellion. Who ignore what constituted so important a factor in the events of the trying period? Lord Westbury, in 1868, said in the House of Lords that "the animus with which the neutral Powers acted was the only true criterion . . . the question was whether from beginning to end it [the neutral Power] had acted with sincerity, and with a real desire to promote and preserve a spirit of neutrality." *Gen. Ar.* vol. i, p. 45.

This is sensible talk. The author of the ... lowed the same lines.

with fuller knowledge of what happened upon both sides of the water, and a little insight into the real motives of individuals, can look calmly at one event after another of that historic period. As a result of such examination, it may frankly be admitted that strong natures in each country were in some degree misled, in respect to the springs of conduct of their brethren of the other country. The American and the Englishman can now sit down and quietly compare notes. It still remains true that the intensity of the indignation which certain acts and omissions of the British Government in that day provoked throughout the Union, is a fact too grave to be ignored.

While preparing the Case it became needful to speak outright. The heading of the opening chapter is thus worded: "The Unfriendly Course pursued by Great Britain toward the United States from the outbreak to the close of the Insurrection." The animus controlling the British Government, manifested as it had been in the several flagrant instances and from time to time freely condemned by more than one participant in debate upon American affairs in the House of Commons, is laid hold upon as furnishing the keynote to an introductory statement of the demand for redress. Fortunate indeed was it that the British Commissioners of the Treaty of Washington had in a friendly spirit expressed regret for the escape of the vessels from British ports, and for the depredations they had committed.

This amende, as it was intended that it should, went a long way to allay the feeling of resentment and anger theretofore so profoundly cherished by the people of the United States. Still, the business of prosecuting the claims of the United States against Great Britain could not be transacted along sentimental lines. Public opinion, with marked unanimity throughout the Union, demanded that the complaint should be set out firmly, and in the tone of an injured suitor asking reparation. The motives with which the Government of Great Britain had acted could but assume, therefore, material import, to the end that the Arbitrators might fully understand the nature of the grievances for which the United States was preferring its complaint.

This country was bringing an action against Great Britain upon the charge of neglect of duty. While the proceedings were to be conducted before a loftier tribunal than an ordinary court of justice, they necessarily retained some of the features of a lawsuit, — English or American. In respect both to the injuries alleged to have been inflicted, and the character of the damages to be recovered, the Case bore resemblance to a common law declaration in tort.

Of course, in an action for redress, the motive with which a tortious act has been done necessarily plays an important part. It would have been unpardonable had the American Case exhibited signs of

resentment, or descended to a display of discourtesy. A rigid scrutiny fails to discover therein either words or tone violative of the canons of good taste. Strong language, to be sure, is used, but always within becoming limits. Plain Anglo-Saxon is what a plaintiff employs when he complains of what the defendant has been doing. Here the charge is insisted upon of a conscious unfriendliness. Serious as that charge is, it appears to have been put forward only after long and serious deliberation.

The Case complains that, upon the outbreak of the insurrection, and before a knowledge of the facts, as they had actually occurred, and of the policy that the Government of the United States meant to adopt in regard to them, could have reached the British Ministry, — and indeed, only a few hours before the new American Envoy had landed in England, — the Ministry of the Liberal party, who were thought upon this side of the Atlantic to be kindly disposed to the preservation of the Union, issued with unbecoming haste the Queen's Proclamation of Neutrality. This hurried action recognized the insurgents as belligerents, thus affording aid and comfort to the Confederacy, and in a corresponding degree depressing the hopes of the loyal North.

It is a historic fact that the hasty exhibition by the British Government of their readiness to help on the cause of the South was seen, understood, and profoundly regretted by every friend of the Union.

That the right to recognize the Confederates as belligerents existed as a sovereign right of Great Britain, nobody disputed. But the right was exercised at a time and in a manner that wounded the United States. The American people felt that they were justly aggrieved. The indignation kindled on this side of the Atlantic was largely due to a belief that, had Lord John Russell and his associates really entertained a friendly feeling for the cause of the Union, they would have delayed the proclamation, at least until after the arrival of Mr. Charles Francis Adams; and moreover, that, had they so chosen, they could easily have found means whereby to prevent the fitting-out of vessels like the *Florida* and the *Alabama*, to prey upon the commerce of a nation with which their country was at peace, and drive it from the ocean.

It does not escape observation that occasionally a writer is tempted to advance an expression of his own unsupported opinion, under the guise of saying that "an impartial reader" will conclude thus and so. Yet I have no hesitation in affirming that any person who to-day, with an unbiased mind, weighs the recorded evidence upon the point of the unfriendliness of Great Britain, will thoroughly satisfy himself that the charge in the Case is amply sustained.

The British Government refused in their Counter-Case to enter upon a discussion of the charge of hostile motives and insincere neutrality, it being "in-

consistent with the self-respect which every Government is bound to feel." [1]

Sir Alexander Cockburn, in his dissenting opinion, stigmatizes the action of the Agent and Counsel of the United States as taking advantage "to revive with acrimonious bitterness every angry recollection of the past, and, as it would seem, to pour forth the pent-up venom of national and personal hate." [2]

The reader who would pursue the subject further will be repaid by consulting the articles contributed to the London *Times*, in 1865, by "Historicus" (Vernon Harcourt, afterwards Sir William Vernon Harcourt) upon the topic of "The Hasty Recognition in the Queen's Proclamation of May 13, 1861," and the rejoinder to them, in 1868, by Mr. George Bemis, of Boston, in a communication to the Bos-

[1] *Gen. Arb.*, vol. ii, p. 203.

[2] *Ibid.*, vol. iv, p. 311. *Per contra*, the dignified and calm expression of views by Count Sclopis, the President of the Tribunal, as to the conduct of the British Ministry in shutting their eyes to what was going on in aid of the Confederate cause, lends no countenance to the theory of an existing excuse for this violent outbreak on the part of the dissenting member. *Ibid.*, vol. iv, p. 62. The *Annual Register for* 1872 (p. 110) sensibly observes of Sir Alexander Cockburn's "Reasons": "To an Englishman with an Englishman's prepossessions, its vigorous language may naturally have appeared irresistible. It does not follow that it would commend itself equally to the judgment even of impartial foreigners. His energetic disclaimer of unfavorable sentiments on the part of England towards the North in the great struggle could meet among them with little response; and their inference that her conduct towards the North in the matters before the Tribunal had been influenced by such sentiments could not be shaken by simply denying their existence."

ton *Daily Advertiser*, subsequently enlarged and printed in pamphlet form. Mr. Bemis, it may be explained, printed three other pamphlets, relating to the *Alabama* Claims, all of them timely and valuable.

"Historicus" asserts that it was a matter, not of choice, but of necessity, that the proclamation should issue as it did. He finds such necessity in the proclamation of President Lincoln, announcing the blockade of Southern ports. This position he maintains with vigor, and throughout the article he proves himself to be a learned writer, familiar in all respects with the subject in hand.

Mr. Bemis in his reply is not less trenchant, or apparently less sure of his ground. He argues that (1) the position now (1865, as contrasted with 1861) taken, that the American proclamation necessitated the Queen's proclamation of neutrality, was an afterthought; (2) President Lincoln's proclamation of blockade was not the occasion of the recognition of the Confederate belligerency, because, supposing the former to have been officially communicated, it was not known to have been in force at the date of the latter; furthermore, if in force, it was not such an act as ought to have been internationally treated as an act of war.

The contentions of the American writer are advanced in bold and aggressive terms. His treatment of the question at issue is skilful; his argument cogent, and his conclusions apparently unanswerable.

At any rate, the reasoning on each side will be relished by one who likes to witness a debate carried on between men of brains.

The following extract comprises the chief (if not the only) part of his comment that can be described as partaking of the nature of personal criticism. It is reproduced here from no purpose of keeping alive a spark of unkind sentiment toward what is still the "mother country," but because it illustrates the pitch of recrimination which a discussion between champions of the two nations was almost sure to reach at that exciting period.

"Historicus is attempting," says the American writer, "to soothe our 'irritation' at the hasty recognition of rebel belligerency, — a matter which, considering how hardly it has pressed upon us in vital particulars for the last four years, I think the world must give us credit for having borne with at least tolerable equanimity, — with the following *international* blister.

"Says Historicus: 'I am too well aware of the unhappy irritation which exists on the subject [of recognition of the rebels] in the public mind of America not to desire to offer the smallest contribution toward its removal. . . . Unhappily, there are too many persons on both sides of the Atlantic who indulge themselves in the wicked and dangerous amusement of inflaming passions which they ought to soothe. . . . My ambition is of quite another sort. I desire, by a recourse to those fixed and ascertained principles of law and maxims of justice which are enshrined in the records of nations, and the conscience of mankind, as the perpetual arbiters of truth and of peace, to remon-

strate against an unreasonable anger and an unjust animosity. Surely, sir, these evil tongues, which are like a sharp sword, may rest sated with the blood which they have helped to [make?] flow. *Sat prata biberunt.*'

"All of which I venture to call the quintessence of cant; only equalled by Lord Russell's declaring to his envoy at the American seat of Government, Lord Lyons, on the 6th day of May, 1861, how deeply he deplored the disruption of the American Republic, and that 'no expression of regret you may employ at the present deplorable state of affairs will too strongly declare the feelings with which Her Majesty's Government contemplate all the evils which cannot fail to result from it'; and yet leading off to the world (the tidings of the attack on Sumter being then less than ten days old) with the announcement that 'the late Union' 'has separated into distinct confederacies'; and 'the Government of the southern portion (having) duly constituted itself,' Her Majesty's Government, 'feel that they cannot question the right of the Southern States to claim to be recognized as a belligerent, and, as such, invested with all the rights and prerogatives of a belligerent' — and '*Her Majesty's Government do not wish you to make any mystery of that [this] view!*' That is, 'the civil war,' as he calls it, having so far lasted ten days, he instructs his envoy 'to make no mystery' *of telling the Government to which he is accredited that its supremacy has gone to pieces, and that he shall henceforth consider himself as Minister plenipotentiary to 'the late Union'* !

"Great affection that for the ally 'with whom Her Majesty's Government have at all times sought to cultivate the most friendly relations'!" [1]

[1] *Alabama Claims*, vol. iv, United States Documents, Correspondence and Evidence, pp. 29–30.

It is eminently proper, however, that an additional extract be appended as proof that this writer understands likewise how to use the language of compliment. Upon a later page, after expressing regret that Mr. Harcourt should throw himself open to a suspicion of inadequate accuracy, Mr. Bemis proceeds: —

"For one I must own to deriving great personal pleasure as well as profit, from his publications; and I believe I speak no more than the truth when I add that I think the United States Government and people are under great obligations to him for his advocacy of just and high-minded measures of international dealing towards this country at various periods of the late civil struggle, — greater, perhaps, than to almost any European writer who has undertaken to discuss our foreign relations." [1]

This acknowledgment is followed by a few kind remarks in behalf of Earl Russell, gratefully referring to "his important and substantial friendliness toward the United States in more than one particular"; with a happily worded expression of a sense of obligation for the kind treatment on Earl Russell's part of Mr. Adams, our Minister "at the British Court throughout the dark days of our national discredit with Englishmen generally. Nor will Americans soon forget his lordship's magnanimous and candid confession at the Garrison banquet of the wrong he had done President Lincoln in questioning the sincerity of his motives in issuing the Emancipa-

[1] *Alabama Claims*, vol. iv, p. 45.

tion Proclamation. Such a confession almost marks a new era in the practice of professed diplomatists." These words were uttered in 1868.[1]

It was the clear, forcible presentation of the claims of American shipowners and of American merchants in the Case that won for the United States the triumph at Geneva.[2]

[1] George Bemis (1816–1878) was the second scholar in his class (1835) at Harvard. He practised law for a while with marked success at Boston, but his health failing he went abroad for a stay of considerable length. He thereupon turned his attention to the study of public law. A memoir of Mr. Bemis prepared by Judge Ebenezer Rockwood Hoar (one of the American Commissioners of the Treaty of Washington) will be found in the *Proceedings* of the Massachusetts Historical Society for 1878 (pp. 112–116). Judge Hoar says of him that "He contributed numerous articles to newspapers, and exposed unfounded pretences of the British Government with a thoroughness of research and closeness of reasoning which could hardly have been surpassed." (p. 114.)

Mr. Bemis, who died at Nice, France, 5 January, 1878, left $50,000 (subject to a life estate) to Harvard College to found a professorship of Public or International Law, which became available in 1892. In his will he expresses a "hope that the bequest will in some degree aid the promotion of the science of public law in the United States, particularly on the part of my brother lawyers, who I have thought have hardly been alert enough in coming to the aid of the National Government on the great questions of belligerent and neutral rights which have of late years so much exercised our country and England. May it be the continuing preëminence of my country to know and practice a just and Christian neutrality, while the other nations are cultivating the arts and prerogatives of war." *History of the Harvard Law School* (1908), vol. ii, p. 408.

[2] Two pieces of testimony may be adduced in proof of this assertion, supplied from sources worthy of the highest credit.

After the Lord Chief Justice had returned from the first meeting

The British Case was the work of Mountague Bernard, of Oxford (who, it will be recalled, was one of the Joint High Commissioners to frame the Treaty), assisted by Lord Tenterden, with Sir Roundell Palmer superintending and taking part. It is composed in a finished style, at once lucid and dignified. "Its tone," says Lord Selborne (Sir Roundell Palmer), "was studiously respectful toward the United States; no pains were spared to avoid the use of any language which could wound the susceptibilities, or offend the high spirit of a generous nation." [1] The positions taken are defended with ardor, and much ability and address are shown in the line of argument presented. Probably it never

of the Arbitrators at Geneva, in December, 1871, he chanced to be a guest at a dinner-party, in London, where were present Disraeli, and other eminent leaders of State. My informant thinks (though not positive) that it was at Earl Stanhope's. An American gentleman happened to be of the guests. This gentleman repeated to my informant a remark that he heard fall from the lips of Sir Alexander Cockburn. That remark was: "The American Case is unanswerable."

The second witness to be called to the stand is David Dudley Field, an eminent lawyer of New York City, who had particularly interested himself in the details of what had taken place at Geneva. Chancing to be in Turin, not long after the Tribunal had adjourned, he called upon Count Sclopis to pay his respects. After a protracted conversation upon the topic of the memorable event with which the name of the Italian jurist and statesman will ever be associated, Mr. Field felt emboldened to say: "Now, pray tell me who was it that gained the victory for the United States?" "It was Mr. Davis — the author of the American Case," was the reply.

[1] *Memorials, etc.*, vol. I, p. 229.

occurred to the American representatives that their opponents were at pains to refrain from wounding the susceptibilities of the United States. They took it for granted that Great Britain was doing in her own way the best she could to make out a defence.

The British Case undertook to prove that the United States were not particularly diligent in performing their duties as a neutral towards Spain, Portugal, and other powers. It took care to state that this averment was introduced with no intention of casting any reproach upon the Government or people of the United States.[1] This action is met by our stating in reply that the remarks were

"apparently introduced for the purpose of inducing the Arbitrators to assume that the United States, at some or all of those times, did fail to use the diligence for the repression of hostile expeditions from their shores which ought to have been exercised, and which is required by the Rules of the Treaty of Washington. The United States would regard such an imputation as a reproach, however intended by its authors." [2]

The Counter-Case then asks attention to evidence which will show that Her Majesty's Government has been misinformed. All this is stated, as it should have been, in a quiet, dignified style.

The praise bestowed by Lord Selborne upon the authors of the Case of Great Britain because of the

[1] *Gen. Arb.*, vol. i, p. 243.
[2] *Ibid.*, pp. 433–434.

consideration displayed by them for the feelings of the opposite party, is evidently designed to lend emphasis to the observation that immediately follows: "In all these respects," says the Counsel for the defence at Geneva, "the American Case was in the most marked contrast with our own." Of criticism such as this, it is to be said that much depends upon the point of view of the writer. Lord Selborne may be pardoned for declining to put the American Case upon so high a plane as that which a handiwork partly his own occupies in his estimation. Moreover, the British Case had no occasion to be aggressive. Great Britain came to Geneva to explain and defend, — not to lodge an accusation. Extenuation can best hope to be listened to where moderate and gentle terms are used to set it forth.

As we have just seen, however, Great Britain, with all of her concern for avoiding unpleasant remarks, does not hesitate to resort to the *tu quoque* argument — though, as it appears, not very successfully. The truth is, both countries put forth strong men to speak strong words. As for courtesy, good taste, friendly consideration, and sentiment generally, it is enough to say that the pleadings and the argument were conducted by gentlemen. Both sides went to the contest to

> "do as adversaries do in law — . . .
> Strive mightily, but eat and drink as friends."

No really discourteous expression, so far as I am aware, found its way into these papers, although

they deal with controversial points, in respect to which an intense national feeling had continuously manifested itself. Lord Selborne, we must bear in mind, is writing a book of personal reminiscences after proceedings had ended wherein his client had been cast in damages. A pure-minded man, of the highest sense of honor, Sir Roundell Palmer knew what it was to adhere stubbornly to an opinion. Another one of the Geneva Counsel wrote a book also. Caleb Cushing, as soon as he got back to Washington, *dum fervet opus*, dashed off certain remarkable chapters entitled "The Treaty of Washington." While there is much in Cushing's pages that is expressed in severe and almost intemperate terms, the author tells not a little plain truth, especially in what he has to observe of the behavior of Sir Alexander Cockburn.

Of this book something will be said later on. For the present, bearing in mind what Lord Selborne has declared of the care with which the British Case sought to avoid offending "the high spirit of a generous nation," the reader may like to see how Mr. Cushing deals, for instance, with the charge in the British Case of the neglectful way in which the United States once treated the rights of Spain and Portugal. That spirited writer declares: —

"Instead of defending its own conduct in the matter at issue, the British Government travels out of the record to find fault with the conduct of the United States at other times, and with respect to other nations. It presumes to

take upon itself the function of personating Spain, Portugal, Nicaragua, and to drag before the Tribunal at Geneva controversies between us and other States, with which that Tribunal had no possible concern, — which it could not pretend to judge, — and of such obvious irrelevancy and impertinence that not one of the Arbitrators condescended to notice them, except Sir Alexander Cockburn.

"The presentation in the British Case of considerations of this order, worthless and absurd as argument, and wantonly offensive to the United States, was, in my judgment, an outrageous act, compared with which, in possible susceptibility of blame, there is nothing to be found in any of the affirmative documents presented by the American Government. . . .

"I mention these circumstances for the purpose of showing how relatively unjust it was to impute offensiveness of spirit and language to the American Case, in view of the much more objectionable things in the British Case; and for the further purpose of pertinently stating that it was undignified for Great Britain to complain of the manner in which the Agent or Counsel of the United States might see fit to argue our cause, as it would be for the American Government to undertake to prescribe limits of discretion in this respect to the Agent or Counsel of Great Britain." [1]

The Case of Great Britain reflects a great deal of credit upon its authors, chief of whom was Mountague Bernard. It skilfully presents every extenuating consideration that could possibly be advanced

[1] *The Treaty of Washington*, pp. 60–61.

to sustain the position that the British Government did its whole duty toward the United States. The plan is adopted of stating several abstract propositions, and then applying them to the facts as collated. The leading ground of defence is comprised in the assumption that the Foreign Enlistment Act, of 1819, measured the extent of England's neutral obligations. This idea is brought forward again and again. The officials of the United States, it was said, knew more of the truth as to what was going on at Liverpool than did the Government. The courts were open to them. If they did not bring forward competent evidence enough, it was no fault of the British Government.[1] The British Counter-Case, it will be seen, preserves everywhere a dignified tone. It replies in detail to the various propositions advanced in the Case of the United States, and among other matters discusses what is "due diligence" under the Three Rules of the Treaty. The argument still adheres to the idea that the municipal law of Great Britain is to be invoked by the complaining Government. The neutral Government must have "reasons which can be exposed in due time to the test of judicial enquiry, for such a belief as is sufficient to justify it in setting the machinery of the law in motion."[2] The cumbrous method of procedure in enforcing the Act of 1819 is adduced as if to excuse

[1] Legislation more rigid and calculated to prevent violation of neutrality was enacted in 1870.

[2] *Gen. Arb.*, vol. ii, p. 372.

apparent delay. The board of customs transmit affidavits to the Treasury, and then the opinion of the law-officers of the Crown will probably be taken. The following naïve information is given to the Tribunal: —

"Some little time is consumed in the mere transmission of the papers, the Custom-house being situated on the Thames, below London Bridge, and the Treasury in Whitehall, near the Houses of Parliament, the distance between the two being about three miles." [1]

The dominating theory of the defence had already been elaborately put forth in Mountague Bernard's scholarly and valuable work, "The Neutrality of Great Britain during the Civil War in America."

Professor Bernard was a student, and not a man of affairs. He had enjoyed, I believe, no experience in the practice of diplomacy. Lord Selborne praises his great attainments in general and international jurisprudence. Bernard writes in a calm tone, and in a style of marked purity, — and one might almost say of sweetness of temper. We are prepared to understand what Selborne means when he says of him: —

"He was a man of singular gentleness, with a wide range of intellectual interests; never putting himself forward, but always ready for any duty which he could perform. . . . Whatever praise either the matter or the manner of the British Case, Counter-Case and Summary of Argument may have deserved, was mainly due to him." [2]

[1] *Gen. Arb.*, vol. ii, p. 410. [2] *Memorials*, vol. i, p. 251.

The same quiet, gentle influence is to be observed in more than one passage of the Case and Counter-Case. If he who is disposed to play the critic shall note in Mountague Bernard's pages a lack of force and trace a like remissness in the official documents of which we are now speaking, he must in justice accord high praise to the spirit of fairness which they breathe. This devoted Englishman, it is plain to see, did for his country all that any one could do — and that with a fine simplicity and a sincere conviction that the motives and conduct of the Ministry had been as high-minded in the performance of their duties as was he himself in vindicating the honor and the integrity of England.

The British Counter-Case filled four folio volumes. It was composed of ten parts, the preparation of which must have entailed long and severe labor. The Counter-Case of the United States (which closed the pleadings) was made up, as already stated, of two large folio volumes. Much of the material furnished on either side might just as well have been omitted. At all events, the Arbitrators were put in possession of everything bearing in the least degree upon the issue that could possibly be gathered up in the archives of both Governments; and the facts were skilfully arranged and summarized.

The Counter-Cases, it will be remembered, were exchanged by the respective Agents, who met for the purpose at Geneva on 15 April. Neither party could have known what was contained in the Counter-Case

of the other. The only portion that the reader may care to see quoted here is the following extract from the remarks of Great Britain on the subject of the charge lodged against her of harboring a conscious unfriendly purpose towards the United States: —

"To the second chapter of the American Case, which imputes to the British Government hostile motives, and even insincere neutrality, no reply whatever will be offered in this Counter-Case. The British Government distinctly refuses to enter upon the discussion of these charges. First, because it would be inconsistent with the self-respect which every Government is bound to feel; secondly, because the matter in dispute is action and not motive, and therefore the discussion is irrelevant; thirdly, because to reply, and to enter upon a retaliatory exposition, must tend to inflame the controversy which, in the whole tone and tenor of its Case, the British Government has shown its desire to appease; and lastly, with respect to the charges themselves, if they were of any weight or value, the British Government would still contend that the proper reply to them was to be found in the proof which it has supplied that its proceedings have throughout, and in all points, been governed by a desire, not only to fulfil all clear international duties toward the Government of the United States, but likewise, when an opportunity was offered, even to go beyond what could have been demanded of it as of right, in order to obviate all possibility of cavil against its conduct." [1]

Great Britain in keeping silence is here seen to

[1] *Gen. Arb.*, vol. ii, p. 203.

have pursued an eminently discreet course. The world may judge what foundation really existed for the charge. While convinced that the charge is fully sustained by the testimony adduced, I deem it not inappropriate, in passing from the subject, to quote, in fairness to those who would acquit Great Britain of an unfriendly feeling, the words of Count Sclopis, President of the Tribunal, who, after finding that Great Britain had failed to observe due diligence, remarks: —

"No Government is safe against certain waves of public opinion which it cannot master at its will. I am far from thinking that the animus of the English Government was hostile to the Federal Government during the war." [1]

[1] *Gen. Arb.*, vol. iv, p. 68. If the reader cares to follow the subject further, it may interest him to examine the criticism put forward by an American historian of to-day, whose high reputation gives to his conclusions an unusual weight and importance — as reviewed by the present writer in a letter that appeared in *The Nation* of 24 January, 1907. The letter deals with certain statements made by Mr. James Ford Rhodes, the distinguished author of *The History of the United States from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877*. It aims to point out the injustice of the strictures contained in the sixth volume of this valuable work, where Mr. Rhodes condemns in severe terms the conduct of our case at Geneva by Bancroft Davis, as well as the tone and temper (in the American Case) of Mr. Davis's arraignment of Great Britain — a charge of mismanagement which the present writer conceives to be without foundation. A reprint of the letter will be found in Appendix IV, *post*.

## CHAPTER VI

### THE INDIRECT CLAIMS — THE TREATY IN PERIL

In an earlier chapter describing the labors performed at Paris, intimations are conveyed to the reader that our work had to be accomplished under a cloud of doubt as to whether there would be any arbitration after all. During the entire season that had been occupied with the preparation of the Counter-Case and Argument, and even down to the hour of departure from Paris to Geneva, there prevailed the direst apprehensions of a rupture of the Treaty. That result might have meant war. At this distance of time it seems passing strange that many months after the signing of a Treaty between two great English-speaking nations it could possibly happen that one of the parties to an agreement to refer to arbitration "all claims . . . generically known as the *Alabama* Claims" should refuse to go forward unless the other would withdraw a portion of the claims advanced, and stipulate that such portion never came within the scope of the agreement to refer. Yet such is the fact.

To-day should a mention of the Geneva Tribunal of Arbitration arise in a circle of well-informed persons, and each individual be asked to state what one incident connected with its history has left upon the

memory the most vivid impression, nine out of ten would answer — "The indirect claims." The subject of being exposed to the danger of having to pay an enormous bill for the *Alabama* Claims completely absorbed for the time being public attention in England. Almost everybody in the kingdom was seized and carried away by a dreadful fear lest the country be overwhelmed by an appalling calamity. It is not too much to say that, with the exception of a time of actual war, or of a political upheaval like the French Revolution, perhaps never before had the world witnessed the spectacle of so tremendous a tidal wave of popular feeling. Or, to change the figure, never had there swept through the land such a political hurricane.

A black cloud came up on the horizon — a portent of disaster. Then the storm raged with unabated fury — until at last, in a trice, it subsided, and once more a calm prevailed. That memorable season was one long strain of anxiety to the statesmen and leaders of public thought of Great Britain.[1]

Let us briefly pass in review the events of this extraordinary crisis. In an endeavor to account for what now seems to have been a senseless panic, we shall examine the alleged grounds upon which Great

[1] The first untoward result to be apprehended was a break-up of the Gladstone Cabinet. Says Mr. Forster: "It is no secret now that the Cabinet was the scene of more than one heated discussion during those anxious weeks, and that the tension was so severe at times as almost to threaten the existence of the Ministry." Reid: *Life of Forster*, vol. ii, p. 27.

Britain fancied that she had the right to rely for justification in virtually threatening to disrupt the Treaty. The closer it is looked into, the more serious does this chapter of political history appear,— a great nation frightened by a spectre.

To begin with, we must understand what is meant by the term "indirect claims." A more fitting term perhaps would be "national claims," as distinguished from the claims of individual owners of ships or cargoes. Mr. Cushing observes: —

"The expression ['indirect claims'] is incorrect, and if admissible as a popular designation, it must not be permitted to produce any misconception of the true question at issue. It would be less inaccurate to speak of them as 'claims for indirect or constructive losses or damages,' which is the more common phrase in the diplomatic papers; and less inaccurate still to say 'remote or consequential losses and damages.' But, in truth, none of these expressions are correct, and the use of them has done much to obscure the actual point of controversy, and to divert the public mind into devious paths of argument or conclusion." [1]

From the first, the Government of the United States had notified Great Britain that the depredations of the Confederate cruisers were inflicting injuries upon the commerce of the Union, injuries that were national in character. Mr. Adams stated, as early as the 20th November, 1862, in a note to Lord John Russell, that he was instructed by his Govern-

[1] *The Treaty of Washington*, p. 35.

ment to "solicit redress for the *national* and private injuries already thus sustained." [1] So, on the 20th May, 1865, Mr. Adams, writing to Lord John Russell, says: —

"In addition to this direct injury, the action of these British-built, manned and armed vessels has had the *indirect* effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain"; that "injuries thus received are of so grave a nature as in reason and justice to *constitute a valid claim for reparation and indemnification.*" [2]

Lord Clarendon wrote Mr. Thornton (the British Minister at Washington), 6 November, 1869, that he was officially informed by Mr. Motley that, while the President at that time abstained from pronouncing on the indemnities due for the destruction of private property, he also abstained from speaking "of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States." [3]

The character of these national claims was perfectly well known to the British Government, and known, presumably, also to the people of Great Britain. The losses and injuries must surely have been a matter of public comment. When the Joint High Commissioners met at Washington, early in 1871, to frame a treaty, the Americans in their

[1] *Gen. Arb.*, vol. ii, p. 461.
[2] *Ibid.* [3] *Ibid.*, p. 462.

opening statement described the demands of the United States as follows: —

"Extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditure in the pursuit of the cruisers; and indirect injury in the transfer of a large part of the American commercial marine to the British flag, and in the enhanced payment of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion." [1]

We are concerned now with a review of what the United States *claimed*. How far this, or that, species of claims might turn out to be capable of proof, and should properly be adjudged collectible of a negligent neutral, is another and a totally different question.

We reach the conclusion that the term "indirect claims," though in one sense a misnomer, was intended to comprehend demands for the redress of national injuries, such as have just been enumerated, — for losses beyond those inflicted upon individual, or corporate, owners of property, — losses sustained by the people of the United States, as a whole, as the indirect result of the depredations of the Confederate cruisers. There were instances of a direct loss of property belonging to the United States, such as resulted from the sinking of the

[1] *Gen. Arb.*, vol. iv, p. 1. The five volumes, containing the statement of the losses on eleven vessels, were lying on the table during the Conferences of the Joint High Commission. *MS. Archives, Department of State.*

United States steamer *Hatteras*, off Galveston, by the *Alabama;* and the capture of the revenue-cutter *Caleb Cushing* by the *Archer*, a tender of the *Florida*. The United States also lost one or two cargoes of coal on merchant vessels under charter to the Government. Claims for these particular losses were presented, but they appear to have dropped out of sight. In the American special reply argument on "Interest" is to be found a "Summary of the American claims." It does not include claims for the two vessels just mentioned, and the text of the argument confines the claims to "actual injuries to private sufferers." [1] This narrowing of the field of damages is important, as bearing upon any future case, where attempt may be made to hold the United States responsible for an alleged failure in the performance of a neutral duty.

A single paragraph of this special reply is worth quoting for the happy appellation applied to the Confederate cruisers. Great Britain had argued, as a ground against the allowance of interest, that the United States failed "sooner to cut short the career of the cruisers." Says the special reply: —

"As to the action of the United States, however unsuccessful, it will be time enough for Great Britain to criticise it as inefficient when its Navy has attempted the chase of these light-footed vagabonds, which found their protection in *neutral* ports from blockade or attack, and sought remote seas for their operations against peaceful

[1] *Gen. Arb.*, vol. iii, p. 573.

commerce. But this consideration has no special application to the question of *interest*." [1]

It is not of present moment to consider whether claims of this nature are capable of being enforced against a delinquent neutral nation. That is the question that the United States proposed that the Tribunal should determine.[2] Our concern now is to ascertain first what is meant by the term "indirect claims"; and, secondly, whether such claims were included as a class of claims among those that, under the language of the Treaty, were to be laid before the Arbitrators for a decision as to their validity.

The official copy of the Case of the United States was handed to the Agent of Great Britain, on 15th December, 1871, at Geneva. A messenger took it post-haste to London. The text of the Case must have been given to the public in England soon after that date,[3] for it was not a fortnight before the London press were making a vigorous attack upon the position maintained by the United States. This attack was levelled against the Case as a whole; and the criticism of the amount of damages claimed was not that any particular class of claims did not fall within the words of the Treaty, but that consequential damages were not recoverable. The *Daily News*, for example, spoke of "extravagant de-

[1] *Gen. Arb.*, vol. iii, p. 571.

[2] This subject receives a measure of attention in Appendix v, *post*.

[3] "Bently has republished the Case in London." Davis to George Bancroft, 13 February, 1872, *MS. Archives, Dept. of State*.

mands intended as an electioneering card." The *Saturday Review* characterized the Case as "perverted and spiteful," and "a malignant composition." The *Spectator* charged "sharp practice." "Absurd pretensions" and "offensive tirade" were phrases reserved for use at a later stage of attack. In fact, the press found fault indiscriminately with nearly everything contained in the Case except the one feature afterwards made the chief subject of complaint, namely, the putting forward of demands not included in the submission under the Treaty. That objection, the record shows, was entirely overlooked by the keen critics of the British press. It made an appearance only weeks after the interchange of the documents at Geneva. "The objection, so far as I am aware," says Mr. Davis, "was not taken by any person entitled to speak by the authority of the Government until a still later day." [1]

The first comment on the Case appeared in the *Morning Post* of 28 December, 1871: "The extravagant nature of the demands is the best evidence that the Arbitrators . . . will refuse to entertain them." There is not a word about infraction of the Treaty.[2]

For more than a month no criticism of the Case from any quarter seems to have been directed against its having included the "indirect claims" in

[1] Davis to Fish, Report 21 Sept., 1872, *Gen. Arb.*, vol. iv, p. 5.

[2] Mr. Davis to Secretary Fish, 1 March, 1872, *MS. Archives, Department of State.*

the classification of claims for which damages were asked. Lord Westbury, so the Earl of Selborne tells us, wrote to Lord Granville 7 January, 1872, urging him to refuse to treat the indirect claims as matters of discussion before the Arbitrators.[1] This was the earliest protest to reach the Ministry. It was not until the 1st of February, however, that the London newspapers awoke to the impending danger of England's going to Geneva with this obnoxious class of claims embraced in the computation. Sir Roundell Palmer appears completely to have lost his head, to judge from his letter of 10 January to Granville:—

"Lord Westbury is not far wrong when he says that nobody here would have been willing to go to arbitration upon such claims as these, advanced upon such grounds, if this 'Case' could have been seen beforehand. That claims upon this country for, it may possibly be, several hundreds of millions sterling (for who can estimate the single item of the loss in the carrying trade, to say nothing of war expense?) should be referred to the decision of a Swiss, a Brazilian, and an Italian lawyer, — if lawyers even they are, — this alone would be a sufficient cause for disquietude. . . . I look upon the 'Case' as an attempt to evade and enlarge the limits within which the subject-matter of the reference to the Arbitrators was intended to be confined by the Treaty of Washington, and to found enormous and intolerable claims upon the enlargement of those limits." [2]

Sir Roundell prepared a memorandum in which he appears to have demonstrated to his own satisfac-

[1] *Memorials*, vol. i, p. 231. [2] *Ibid.*, p. 233.

tion from the despatches "that the words in which the subject-matter of the reference to arbitration was defined had a 'known' sense, comprehending only the claims for direct losses resulting from the captures made by the *Alabama* and other cruisers." [1]

On Friday, 2 February, 1872, General Schenck cabled to Secretary Fish: "London journals all demand that the United States shall withdraw claims for indirect damages, as not within intention of the Treaty. Ministry alarmed. Am exerting myself with hope to prevent anything rash or offensive being done or said by this Government. Evarts here coöperating."

To this despatch Mr. Fish replied, on the 3d:—

"There must be no withdrawal of any part of the claim presented. Counsel will argue the Case as prepared, unless they show to this Government reasons for a change. The alarm you speak of does not reach us. We are perfectly calm and content to await the award, and do not anticipate repudiation of the Treaty by the other side." [2]

There was more or less disquiet in the columns of certain journals of the United States following the

[1] *Memorials*, vol. I, p. 234. This memorandum is probably identical with that enclosed by Granville to Schenck, 20 March, 1872, in a long letter arguing that the United States had waived the "indirect claims" before signing the Treaty. (*Gen. Arb.*, vol. ii, pp. 436–459.) He takes this position under a firm conviction that he is right; and his views, it is likely, strengthened the Ministry at a time when Lord Granville needed the best legal advice he could get.

[2] *Gen. Arb.*, vol. ii, p. 425.

news of what was going on in England, but upon the whole the people attached no special importance to the new phase of affairs. They were content to leave matters to the guidance of the Secretary of State, whose sagacity and prudence they admired; and they knew likewise that the good sense of the President was to be trusted in any emergency. Hence while panic was in full sway on one side of the water, there prevailed on the other a calm attention to the routine of business. Mr. Cushing likens the alarm and consternation of London to "the spasmodic agitation of men who have lost their senses, rather than intelligent action." [1]

The London press continued to be vehement in their mode of attack upon the American Case, insinuating, if not directly charging, bad faith upon the representatives of the United States. English tax-payers were not unmindful of the French indemnity; and visions of an enforced payment of an enormous sum of money to the United States were enough to magnify their fears, and create indignation and hostility against the American Republic. The Gladstone Ministry had to satisfy the country that no such drain upon the national resources was to be put to the test. Talking in Parliament soon began.

Under a democratic government, like that of the United States or England, there is a vast responsibility laid upon the shoulders of the party in power

[1] *The Treaty of Washington*, p. 41.

in respect to foreign affairs. The duty of the statesman is imperative to hold in check that form of prejudice against another nation which may grow into an unreasonable animosity. Such duty consists, first of all, in dealing frankly with the people. Of some matters the people are content to be left in ignorance, at least for a while, so long as diplomatic negotiations are going on; but when the time arrives for disclosing the facts, the whole truth should be told. Opposing political parties are relied on to refrain from their customary attacks where the question relates solely to the conduct of a critically important matter of foreign business. In the present instance, it would have been better had the English people been fully advised, at the time, as to what had been done at Washington by their High Commissioners, in reference to the "indirect claims" growing out of the depredations of the *Alabama* and other cruisers. The Commissioners themselves, or some of them, appear to have brought back home no very clear idea upon the subject.

Soon after the Treaty had been signed, Lord John Russell (12 June, 1871) had moved an address to the Crown, praying Her Majesty "not to ratify any convention by which the Arbitrators will be bound other than the law of nations, and the municipal law of the United Kingdom existing at the period, etc." This motion was aimed at the Three Rules. The noble lord, not a little sensitive because he himself was identified with the escape of the *Alabama*, did

not succeed in having his motion accepted, but his voice could condemn the Treaty. He said: "Everything has been concession on our side; and assertion, I may say without argument, on the part of the United States."

In reply, Lord Granville told the country: —

"The noble earl said that the United States had made no concessions; but in the very beginning of the protocols Mr. Fish [renewed] the proposition he had made before to much larger national claim [i. e., to the so-called indirect claims]. . . . These were pretensions which might have been carried out under the former arbitration [the Johnson-Clarendon Treaty], but they entirely disappear under the limited reference which includes merely complaints arising out of the escape of the *Alabama*." [1]

Lord Derby supported Lord Granville.

Here was a distinct notice, amounting to a guaranty, that Englishmen need not be disturbed about the size of the award (if any) that would have to be paid to the United States, since the claims for indirect losses had been excluded by the terms of the Treaty from reference to the Tribunal. Granville was congratulating himself and his colleagues on the way the negotiations had turned out. On 4th June, he says in a letter to Bright, who it seems had been kept away by illness: —

"I never regretted your absence more than during our discussions [in the Cabinet] on this matter, but all has ended well. There will be much criticism, but no real op-

[1] Walpole: *Life of Lord John Russell*, vol. i, p. 363.

position. Lord Russell was very indignant at first, but I believe, is moderated. Roundell Palmer will support us, and Dizzy will not desert Northcote." [1]

Of course, Lord Granville believed that the spectre of the "indirect claims" had been laid. Such was the report brought back by Northcote. We shall presently discover that Northcote had deceived himself, and thereby had misled others. The truth is, there was no ground whatever for the statement that the United States had waived this class of claims, and that they were not included in the submission of the Treaty. The Ministry had neglected to scrutinize its terms in the light of the protocols. It is a pity that Lord Granville's words had not attracted wider attention at the time they were uttered.

But now the storm signals were up, and Parliament became the scene of a most animated discussion. Of the Premier, his accomplished biographer says: —

"In reporting to the Queen he used language of extreme vehemence, and in the House of Commons (9 February, 1872), when Mr. Disraeli spoke of the indirect claims as preposterous and wild, as nothing less than the exacting of tribute from a conquered people, Mr. Gladstone declared that such words were in truth rather under the mark than an exaggeration; and went on to say that 'we must be insane to accede to demands which no nation with a spark of honour or spirit left could submit to even at the point of death.'" [2]

[1] Fitzmaurice: *Life of Granville*, vol. ii, p. 86.

[2] Morley: *Life of Gladstone*, vol. ii, p. 406.

To an American it looks as though Mr. Gladstone might have employed his talents to a better purpose. In this moment of need he might have given wiser counsel, had he previously made himself familiar with the subject even in a minor degree by a study of the Treaty and of the protocols. Had he done this, he must have concluded that the American Commissioners did *not* waive the national claims; or, at least, he would have been constrained to admit that the question remained open, and therefore that the occasion required from him the language of forbearance and moderation. A truly great leader should have mastered the details of the subject-matter, and then bent all his energies to send forth words of wise counsel to allay the panic. The remark of a recent writer of late English history seems to be not far astray, — that "among Mr. Gladstone's many talents discretion was not the most conspicuous." [1]

Diplomatic correspondence opens on the 3d of February, 1872, with a formal letter from Lord Granville, who informs General Schenck that the British Government holds that it is not within the province of the Tribunal at Geneva to decide upon the claims for indirect losses.[2] On the 27th, Schenck cables to Fish that Granville thinks they should not press for withdrawal of American Case, if the United States "will undertake that their Agent shall inform Arbitrators that the United States do not

[1] Herbert Paul: *History of England*, vol. iii, p. 297.

[2] *Gen. Arb.*, vol. ii, p. 426.

ask award on indirect claims, nor that such claims be taken as an element of consideration in a gross award, nor brought forward in case of reference to assessors." Mr. Fish promptly replies: "Granville's suggestion inadmissible." [1]

On the same day, 27th February, Secretary Fish despatches to General Schenck a letter expressing the surprise and regret of the President at receiving the intimation that Her Majesty's Government hold that it is not within the province of the Tribunal to decide upon certain claims for indirect losses and injuries. Mr. Fish points out that *all* the claims were referred. "What they were is a question of fact and of history. Which of them are well founded is a question for the Tribunal of Arbitration." As to the extent of the claims the letter says: —

"It is within your personal knowledge that this Government has never expected or desired any unreasonable pecuniary compensation on their account, and has never entertained the visionary thought of such an extravagant measure of damages as finds expression in the excited language of the British press, and seems most unaccountably to have taken possession of the minds of some, even, of the statesmen of Great Britain." [2]

Later, our Minister cables Washington that Granville desires to change the language of his proposal. The reply of the Secretary, 29 February, brings out the point clearly: —

"Cannot agree to Granville's proposal as made. De-

[1] *Gen. Arb.*, vol. ii, p. 429. [2] *Ibid.*, p. 432.

sire to meet the British Government in any honorable adjustment of the incidental question which has arisen. Our answer is very friendly, and will, we hope, open the way for a settlement. Whatever the British Commissioners may have intended, or thought among themselves, they did not eliminate the claims for indirect losses, they never asked us to withdraw them, nor did they allude to them directly, or in plain terms; and after the deliberations of the Joint Commission were closed, Tenterden and the British Commissioners allowed them to be formally enumerated in statement of 4th May, without a word of dissent." [1]

The foundation of the British contention being that the indirect claims were waived by the American Commissioners, in the negotiations for the Treaty, the reader will obtain a clearer understanding of the merits of the controversy, if for a moment we turn aside from the narrative of events now occurring and go back to the time of the proceedings of the Joint Commission, that resulted in the signing of the Treaty of Washington.

England sent her High Commissioners to the United States, in the spring of 1871, because, as Earl Granville told the House of Lords, it had become necessary, "in view of the possibility of further European complications, to look at the international relations of Great Britain with foreign states from a new standpoint." [2] The Foreign Secretary had been advised that if there were a chance of war

[1] *Gen. Arb.* vol. ii, p. 434.

[2] Fitzmaurice: *Life of Earl Granville*, vol. ii, p. 81.

with Russia, about the Black Sea, it would be as well to get causes of differences with America out of the way.[1] The prostration of France in 1870 gave Russia an opportunity for declaring herself no longer bound by some of the provisions of the Treaty of Paris; and even if England had been disposed to enter single-handed into a combat with the Russian Empire, the attitude of the United States placed her under securities to keep the peace.[2] The recommendation to Congress by President Grant, that individual claims be assumed by the Government, was an ominous step of which the Gladstone Cabinet were compelled to take note. The Commissioners of Great Britain came to Washington, therefore, impressed with the necessity of agreeing to a Treaty that should for all time put an end to the differences growing out of the *Alabama* claims. It was a grave situation. England could ill afford to let this attempt at a peaceful negotiation fail.

[1] Lord Granville came into office in the summer of 1870, after the death of Lord Clarendon. On the 19th of November, 1870, Childers, First Lord of the Admiralty, wrote to Granville as follows: —

"Has it occurred to you that if there is any likelihood of a war with Russia it is very important that all cause of difference with the United States should if possible be got out of the way, otherwise there can be little doubt that however unprepared they may be just now, sooner or later we shall have them on our hands. Would it be possible to make overtures of such a kind as to lead to a prompt settlement at Washington, including both the *Alabama* and the St. Juan question?" *Life and Correspondence of H. C. E. Childers*, by his son, Lieutenant-Colonel Spencer Childers, R. E. (1901), vol. I, pp. 173–174.

[2] Walpole: *Life of Lord John Russell*, vol. ii, p. 361.

The Government of the United States had indulged the hope that an amicable settlement might be effected by the payment of a gross sum, in satisfaction of all claims. This plan, however, with its many obvious advantages, was not to be adopted. The American Commissioners as a matter of course were obliged to respect a public sentiment long existing as to the proper disposition of the claims of their own citizens. Both parties to the proposed compact knew that, whatever form of words might be agreed upon, the Treaty itself would have to run the gauntlet of the Senate for the approving two-thirds vote.[1]

[1] "The evil influence of Mr. Sumner's speech, and of his memorandum, followed the American Commissioners into the negotiating conferences." (*Mr. Fish and the Alabama Claims*, p. 69.) Says Sir Stafford Northcote, writing 9 May, 1871, to Mr. Disraeli: "I had a long talk with Sumner yesterday, and De Grey is to see him to-day. He is very cautious, but I do not think him unfriendly. He is very anxious to stand well with England; but on the other hand, he would dearly love to have a slap at Grant. We have paid him a great deal of attention since he has been deposed, and I think he is much pleased at being still recognized as a power." Lang: *Life of the Earl of Iddesleigh* (Sir Stafford Northcote), vol. ii, p. 23.

Northcote had written a few days before (5 May) to Earl Granville, that he was very hopeful that the Senate would confirm the Treaty. "Catacazy . . . is, I believe, working hard against us, but we may counteract his influence. We are still sorely puzzled about Sumner, who is, I fear, too civil, but who talks in an encouraging strain to some of our American colleagues, as well as being very democratic towards ourselves. The Democrats, too, are still a mystery. We shall have a great advantage if we are able to meet them day by day while the discussion is going on, for they are some of them very good men, and one at least (Bayard) a really nice fellow,

Keeping in mind, then, both the anxious desire on the part of the British Commissioners that their efforts should prove successful, and the obligation resting upon the American Commissioners to meet the expectations of the country, — expectations that had been carried to a high pitch by the publication of Senator Sumner's indictment of Great Britain, — let us see just what took place with reference to the national (or indirect) claims.

Secretary Fish drew up a paper upon the subject of the *Alabama* Claims. He read this paper before the Commissioners, on the 8th of March. A copy was handed to the British Commissioners. The vital portion of the statement bearing upon the indirect claims, as set forth in that paper, reads as follows: —

"The history of the *Alabama* and other cruisers . . . showed extensive direct losses . . . and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the Rebellion. . . . In the hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made." [1]

and they will hardly like to talk friendly at night and vote hostile in the morning. Still the caucus power is very great here." . . . Fitzmaurice: *Life of Granville*, vol. ii, p. 88.

[1] *Mr. Fish and the Alabama Claims*, p. 74. The 36th Protocol containing this statement is, because of its importance, printed in

We must now scrutinize the language of the Treaty, remembering that the statement we have just read was embodied in a Protocol subscribed four days only before the signing of the Treaty itself.

ARTICLE I

"Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the '*Alabama* Claims,' [here follows an expression of regret.]

" Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels, and generically known as the '*Alabama* Claims,' shall be referred to a Tribunal of Arbitration. . . ."

Surely, the average mind would suppose that the Treaty here undertakes to dispose of *all* claims, of whatsoever nature they may be, that grew out of the

full as Appendix I to this volume. The reader is advised to consult the entire text as there given. If he would pursue the subject further, he will find the British view of the meaning of the Treaty elaborately set forth in Earl Granville's letter to General Schenck, of 20th March, 1872 (*Gen. Arb.*, vol. ii, pp. 436–459); and a reply thereto, vindicating the position of the United States, in Secretary Fish's despatch, 16 April, 1872, to General Schenck (*Ibid.*, pp. 460–474).

acts of these vessels. One would naturally conclude that the indirect losses, of which complaint had been made, and which the statement just referred to treats as classes of claims, are included in the term "all the said claims." The reader not given to hair-splitting would say at once: "Of course, here is an agreement to dispose of the whole subject of complaint, of every kind and description, growing out of the alleged neglect of Great Britain in respect to the *Alabama* and other cruisers, so as to end, by the judgment of the Tribunal of Arbitration, every cause of difference between the two countries traceable to the depredations of these Confederate cruisers."

With all due respect to the British statesmen of that period, such must be pronounced to be the common-sense view of what the Treaty meant. Such certainly was the understanding of the American Commissioners. Such was the interpretation relied upon by the Senate, or the proposed Treaty, we may be sure, would not have been consented to by that body.

Let us now turn to the argument advanced by Great Britain in support of her position that claims for national, or indirect, losses were not meant to be referred to the Tribunal at Geneva. It is an interesting example of how widely two opposing parties may differ as to the meaning of an agreement which they have taken great pains to reduce to writing, conceived to be as plain as possible.

That the British Commissioners, after putting

their names to the Treaty, came back to England and reported that they had secured a waiver from the United States of the indirect claims, is a fact not open to contradiction. The question we have to solve is, Were they justified in so reporting?

The most communicative of their number appears to have been Sir Stafford Northcote, — afterwards Earl of Iddesleigh. Since he was not of the Gladstone party, one might conjecture that he would have been moderate in his praise of what the High Commissioners had accomplished. But nobody showed himself more pleased than Sir Stafford. Socially a very attractive man, he delighted Washington, and was himself delighted in turn. In a light-hearted strain he writes from Washington, as follows, to Mr. Disraeli, 9 May, 1871, the day after the Treaty had been concluded: —

"You will doubtless observe that there is significance in every line of the Preamble to the first Article. *Incedit per ignes, etc.* The object is to remove and adjust 'all complaints' as well as 'claims.' The 'complaints' intended are those which bear on the 'animus' of Great Britain, as evinced not only by her alleged negligence in the matter of the vessels, but also by her alleged premature recognition of the belligerency of the South; and the word covers all the allegations as to our having been responsible for the prolongation of the war, etc. The same ideas are connected with the word 'differences' in the first line. . . . Our object was to let in the claims of the Government without letting in all those wild demands. While, therefore, we refer to the differences and com-

plaints in general language, we submit to arbitration only the claims 'growing out of the acts committed' by certain vessels. This limitation was not obtained without much difficulty, and could not have been obtained at all, if we had not inserted the expression of regret in its present place, and then pointed out to the Americans that that expression in fact balanced, and ought to be accepted as balancing, the complaints which they had made on the score of national wrong, and that they ought to be content with a provision that would entitle them to bring forward claims founded on direct losses (such as the sinking of the *Hatteras*), without going further. Of course, it is possible that they may put forward claims of greater extent, as for instance, claims on account of pursuing and capturing the vessels; but there is nothing in the article to give direct colour to such claims, and our Counsel will, of course, be instructed to argue that they are inadmissible, if they should be presented." [1]

This extract, it is proper to observe, is from a private letter, written off-hand, in confidence. Its language ought not to be expected to exhibit the precision of an official state paper. Still, it marks the writer as given to the use of a loose and vague way of expressing what he means to communicate. Upon a hasty reading one might gain an impression that the Commissioners of the United States entered into a bargain by which they agreed to take "the expression of regret" in exchange for an abandonment of claims for indirect losses. But Sir Stafford does not say that. He tells his party leader that

[1] Lang: *Life of Northcote*, vol. ii, pp. 20–21.

they "pointed out" to the Americans what they "ought" to accept, but he does not say that the Americans accepted. It is to be observed, moreover, that he conceives that the United States may bring forward at Geneva "claims of greater extent" than England thinks were included in the Treaty, — "*our Counsel will, of course, be instructed to argue that they are inadmissible*, if they should be presented."

Sir Stafford, we may well believe, was reflecting the views of his colleagues not less than those of himself; and no doubt they all, in a vague way, entertained an idea that they were going to hear no more of the indirect claims, because England had done the handsome thing in expressing her regret for the escape of the cruisers. But it was left to this excellent and amiable statesman to declare at a later stage in positive terms that the American Commissioners *had waived* the "indirect claims" before the signing of the Treaty.

In the midst of the excitement Sir Stafford (18 May, 1872) made a speech at Exeter, in which he used the following language:—

"I need not tell you that this has been a year of great anxiety and of great trouble to us all connected with the questions raised under that Washington Treaty. . . . We who were the Commissioners last year have felt ourselves in a position in which it was our duty to hold our tongues. . . . But the matter has now, this week, passed into a stage which places us in a somewhat different position . . . a position in which we may speak with freedom.

. . . Two questions have been raised, one the personal question as to what was the understanding between the Commissioners at all events, and perhaps between the two Governments, at the time the Treaty was concluded; the other, as to the general merits of the question which has been raised with regard to what are called consequential damages, or the indirect claims. *Now, with regard to the personal question, I will only say this — that we, the Commissioners, were distinctly responsible for having represented to the Government that we understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration. That being so, we are, of course, brought into painful relations with, and painful questions arise between ourselves and, our American colleagues upon that Commission.*" [1]

I have said that this distinguished statesman had declared in positive terms that the American Commissioners had waived "the indirect claims." The reader will observe that the speaker says "We *understood* a promise to be given." A gentleman of Sir Stafford's integrity is to be taken as meaning by this language to express the statement that such a promise had been actually made. Sir Stafford unquestionably believed such to have been the fact. He had deceived himself.

This public utterance, while not a fit subject for diplomatic correspondence, could not be suffered to pass unchallenged by the Government of the United States. Mr. Fish proceeded to obtain, and put upon

[1] London *Times*, 20 May, 1872, quoted in *Gen. Arb.*, vol. ii, pp. 593–594.

record, the testimony of the gentlemen who had been American Commissioners, in addition to what he could himself state upon the point in question. With admirable discretion the Secretary permitted no word of this testimony to be disclosed in either country until after the indirect claims had been disposed of, and the subject eliminated from the public thought.

Under date of 3d June, 1872, Mr. Fish enclosed to each individual American member of the Commission a copy of the published address of Sir Stafford Northcote, and asked for a statement of recollection as to this alleged promise. For himself, Mr. Fish says: —

"Individually I never heard of any such promise; as one of the American Commissioners, I never made any promise, nor suspected anything of the kind. I have no recollection of any question of the kind being raised, officially or unofficially."

General Schenck, Mr. Justice Nelson, Judge Hoar and Attorney-General Williams, in emphatic terms, reply that they have no knowledge of any such promise. It suffices to quote from one answer, as a sample of them all: —

"My recollection is distinct that no such promise was in fact made; and further, that the only meeting of the Commissioners at which indirect injury or losses were mentioned was that of the 8th of March, the facts in respect to which are truly set forth in the Protocol." [1]

[1] *Gen. Arb.*, vol. ii, p. 599. Lord Ripon, in a speech in the House

Sir Stafford brought away from the negotiations an "understanding" that had no substantial foundation. It must have been rested by him entirely upon a construction that he and his colleagues were quick to give to the text of the Protocol of the 8th of March, the terms of which will presently be examined. A certain exuberance and gayety of spirit is observable in this attractive personage which may well have led him to see a meaning favorable to British interests in the Protocol that does not in fact belong to it.

"Sir Edward Thornton tells me," writes Mr. Fish, in his circular letter of 3d June, to his former associates of the Commission, "that he, in common with his colleagues, understood that the 'indirect claims' were waived; he further says that his understanding on that point was derived entirely from the presentation made of our complaints and claims on the 8th of March, as set forth in the Protocol, and he disclaims any knowledge or idea of any 'promise,' or of anything subsequently said on the subject. This is his personal and unofficial statement to me; probably he might feel a delicacy to bear any public testimony on the question." [1]

The speech delivered by Sir Stafford at Exeter may be dismissed with the remark that there was an honest misconception on Sir Stafford's part as to what took place on the 8th of March, 1871, while

of Lords (4 June, 1872), denied distinctly that any such "secret understanding" existed. *Ibid.*, p. 603.

[1] Fish to each American Commissioner, *Gen. Arb.*, vol. ii, p. 597.

negotiating for the Treaty. The divergence of opinion is not unaccountable. The proceedings were going on between men of honor with no thought or purpose of "sharp practice." While each party sought its own advantage, there existed a mutual confidence and desire to reach a clear and fair understanding. Personally the Commissioners of the two countries were on the best of terms. Sir Stafford was much liked by the Americans.[1] It is an every-day experience for a written contract to be found susceptible of two different meanings. The imperfection of instruments that have been reduced to writing is the more striking when we see leading statesmen of two great powers diametrically opposed upon a single question of fact as to the record of what was agreed upon by picked men trained in the use of precise terms.[2]

[1] It is an interesting circumstance that a few years afterward a younger son of Lord Iddesleigh (Sir Stafford Northcote) was married to Edith, youngest daughter of Mr. Fish.

[2] Fresh evidence of the illusory nature of Sir Stafford's recollections has lately come to light. There will be found in Fitzmaurice's *Life of Lord Granville* (published in 1905) an extract from a letter, written by Sir Stafford to Lord Granville, 7 April, 1872, at a date when it had become vitally important for his countrymen to learn exactly what the British Commissioners the year before had accomplished at Washington. The reader will be impressed anew with the lack of precision that attends Sir Stafford's attempt at an explanation.

"It was more than once urged on us by the American Commissioners that the Senate, having taken the strong course of rejecting the Clarendon-Johnson Treaty, would have great difficulty in now accepting a treaty precisely similar, or similar in a very high degree,

It remains to weigh the reasons assigned by Lord Granville for his assertion that under the Protocol of 8th March, and the wording of the Treaty, the

to that which they had previously disapproved. The language of the Treaty was studiously chosen even in small and unimportant particulars, so as to make it as different as possible from its forerunner. Most probably the insertion of any words expressly and in terms barring the indirect claims would have excited the jealousy of the Senate, as seeming directly to reverse their former vote.

"At all events, we believed that such was the impression of the American Commissioners, and we considered that they, whom we took to be thoroughly in earnest, were the best judges of what would be fatal to the adoption of the Treaty by the Senate. We abstained, therefore, from embarrassing them by pressing any such words, contenting ourselves with such phraseology as we thought would effectually, though unostentatiously, bar the claims in question.

"I still think that the language is sufficient for that purpose, and I should not fear to submit it to the judgment of any competent tribunal. But to do so would be to admit that, if the tribunal decided against us, we must be bound by its decision; and as we certainly should refuse to be so bound, we ought not to allow the question to be submitted.

"I think we ought to rely upon the argument from intention. But in urging this argument, I think we ought frankly to admit that it is possible that the Americans may have taken throughout a different view of the proceedings from that which we took of them, and that they may have mistaken the motives of our reticence, and we the motives of theirs. It was a misfortune that we did not keep regular protocols *de die in diem*. Had we done so, the present misunderstanding could not have arisen, though perhaps the Treaty would not have been concluded, or if concluded, would not have passed the Senate. It was, I think, an error of judgment for which we, the Commissioners, were certainly responsible. But, had we rejected the suggestion made by the American Commissioners, and had we insisted on regular protocols against their opinion, we should have been told that we had upset the chance of a settlement by our

United States had no right to ask the Tribunal of Arbitration to make a ruling upon the national, or indirect, claims. These reasons are set out in his Lordship's note and accompanying memorandum of 20th March, 1872, a state paper that bears the marks of a specially careful preparation.[1] Briefly stated, they amount to the following propositions:—

(1) The term "*Alabama* Claims" had acquired the meaning of claims for the capture or destruction of the property of individual citizens, and of such claims only.

(2) The agreement to refer to arbitration was "an amicable settlement," and the concession made by Great Britain justified her in treating such agreement as amounting to a waiver of the indirect claims by the United States. The Treaty is called an amicable settlement, not merely in relation to the "*Alabama* Claims," but as an entirety.

(3) The debate in the House of Lords (12 June, 1871) on the motion for an address to the Queen, praying her to refuse to ratify the Treaty, showed that the Lords were assured that the indirect claims had disappeared. The American Minister was present at this debate, and a full report was communicated to the Government of the United States. This

own pedantry, and by our folly in refusing to listen to those who knew the best real mode of effecting one." *Life of Earl Granville*, vol. ii, pp. 92–93.

[1] *Gen. Arb.*, vol. ii, pp. 436–459.

interpretation was not challenged by the statesmen or by the public press of the United States.

(4) Great Britain cannot be supposed to have bound herself to invite other countries to observe the Rules of Article VI, if they are to entail upon a neutral an unlimited liability, and involve the ruin of a whole country.

In reply to these points *seriatim*, it may be stated:

(1) To the point first named the answer is obvious. The United States had a right to understand by the term "*Alabama* Claims" any and all claims, of whatsoever description, that they could persuade the Tribunal of Arbitration to say that they had, for losses growing out of the acts of the vessels. *All* claims must necessarily embrace every kind of claim. Their generic name does not confine the claims to a special class or classes. Besides, it is the province of the Arbitrators themselves to decide what claims, under the Treaty, are properly before them. They are empowered to pass upon the question of the extent of their own jurisdiction. Mr. Fish makes it plain that claims for national or indirect losses *were* notified to Great Britain at an earlier date than that of the appointment of the Joint High Commissioners. As an instance in proof, he refers to Lord Clarendon's letter to Mr. Thornton, 8 November, 1869, in which his Lordship says that he had been

"officially informed by Mr. Motley that while the President at that time abstained from pronouncing on the indemnities due for the destruction of private property, he

also abstained from speaking 'of the reparation which he thinks due by the British Government for the *larger account of the vast national injuries* it has inflicted on the United States.'" [1]

If these claims had never been "notified" to Great Britain, why — pertinently asks Mr. Fish — so much stress laid upon their assumed relinquishment?

(2) The Treaty provision for reaching a settlement is not of itself "an amicable settlement." As Mr. Fish cogently remarks: —

"The differences between the two stand out clear and broad. One would have closed up, at once and forever, the long-standing controversy; the other makes necessary the interposition of friendly Governments, a prolonged, disagreeable, and expensive litigation with a powerful nation, carried on at a great distance from the seat of this Government, and under great disadvantages; and, more than all, it compels the re-appearance of events and of facts, for the keeping of which in lifeless obscurity the United States were willing to sacrifice much, as they indicated in their proffer to accept a gross sum in satisfaction of *all* claims. . . .

"The offer of this Government to withhold any part of its demand expired and ceased to exist when the acceptance of the proposal which contained the offer was refused. It was never offered except in connection with the proposal that the Joint High Commission should agree upon a gross sum to be paid in satisfaction of all the claims, and then it was repelled. It was never again suggested from any quarter." [2]

[1] *Gen. Arb.*, vol. ii, p. 462. [2] *Ibid.*, p. 469.

There could have been no mistake as to the meaning of the words employed. Bancroft Davis says, in a letter to Mr. Fish of 19th January, 1872: —

"I remember distinctly that, at the meeting of March 8th, when your statement was read, Lord de Grey asked what was meant by an amicable settlement — and you replied: 'Payment.'" [1]

Nothing can be clearer, it would seem, than the fact that the American Commissioners did not waive the claim for national injuries. The testimony of Mr. Fish and his colleagues is incontestable. Nor did the American Commissioners do or say anything that could lead a single British Commissioner to understand that they had such a waiver in mind upon the execution of the Treaty. The belief entertained by the British Commissioners, that the indirect claims had been waived before the Treaty was concluded, grew out of a misconception on the part of Sir Stafford Northcote and his associates.

(3) An argument based upon speeches made in the House of Lords, upon an occasion when the American Minister was present, is, of course, entitled to little weight. Notice could not be taken by the Government of the United States of political debates in Parliament, in which interpretation is put upon the language of a treaty. The same argument might be made before the Tribunal, at Geneva; and the United States would then and there exercise an opportunity to reply, should it seem advisable.

[1] *MS. Archives, Department of State.*

(4) The assumption that the Arbitrators would be likely to cast Great Britain in enormous damages was in direct contradiction to what must have been the judgment of the best informed English statesmen. They knew well enough that the United States did not expect a favorable ruling; and did not want a finding that would bear onerously upon a neutral nation in time of war. What the United States expected and desired (there could be no secret about it) was a determinative judgment by the Tribunal — that the indirect claims were not collectible. They would thus be forever disposed of. The United States, having brought them forward for the very purpose of getting rid of them, could not withdraw them and leave them unsettled.

"I had an interview with Mr. Adams, in which at the request of Mr. Fish and of the President I conveyed to him the information that neither the President nor the Secretary of State desired to have the indirect claims sustained; and that they had been put in the Case because the Chairman of the Senate Committee on Foreign Relations had officially put them forward in such a way that it was thought that the Tribunal must be asked to pass on them. The action of the Tribunal was acceptable to the United States." [1]

Just before Mr. Adams was to sail from Boston, Mr. Boutwell, then Secretary of the Treasury, called on him, at the request of Mr. Fish, to communicate an expression of further wishes of the Government.

[1] MS. Letter of Bancroft Davis to Hackett, 10 July, 1902.

Says Mr. Adams: —

"Mr. Boutwell handed over to me a packet from Governor Fish, and said it was the desire of the Government, if I could find it consistent with what they understood to be my views of the question of indirect damages, that I would make such intimation of them to persons of authority in London, as might relieve them of the difficulty which had been occasioned by them. I told him of my conversation with the Marquis of Ripon, in which I had assumed the heavy responsibility of assuring him that the Government would not press them. I was glad now to find that I had not been mistaken. I should cheerfully do all in my power to confirm the impression, consistently with my own position." [1]

By treaty stipulation it had been agreed that *all* claims should be referred. If this particular class of claims (however lacking in validity) were meant to be excluded, the Treaty would have said so. Obviously it was for the Tribunal itself to pass upon their validity; and both sides entertained the opinion that they did not form a good foundation for damages, — a conclusion promptly reached by the Arbitrators, upon the subject-matter being brought to their attention.

The brief, concluding section of the Counter-Case of the United States (the ninth) treats of damages. It was written by Mr. Davis. Its tone is moderate

[1] George Sewall Boutwell: *Reminiscences of Sixty Years in Public Affairs*, vol. ii, p. 201.

and dignified. It declares it to be the expectation of the United States that the Tribunal "will hold itself bound by such reasonable and established rules of law regarding the relation of cause and effect, as it may assume that the parties had in view when they entered into their engagement to make this reference." It expressly states that it is not contemplated that the rule would make a course of honest neutrality unduly burdensome.[1] In the light of what the reader now knows of the agitation in England, it is interesting to note that Mr. Davis writes to Mr. Fish (5 April, 1872) shortly before the date fixed for the exchange of the Counter-Cases:—

"Some weeks since I had suggested to the Counsel that, as the differences which have apparently arisen in carrying out the Treaty seemed to be founded on a dread in England of a hostile award, under some unknown rule of damages, for a greater amount than they could pay, perhaps the lawyers could arrange the matter, without political action of the Government, by agreeing that as the Treaty was silent concerning the law by which damages were to be measured, it might be understood that on our side a proposition would be accepted from the lawyers on the other side, that the Tribunal should be governed by English or American law, in measuring the damages. Last week, after full consideration, they decided that they would prefer that something should appear in the Counter-Case on the subject. I, therefore, prepared the ninth section, and it was accepted by them as it stands. My own preferences would have been to have had the

[1] *Gen. Arb.*, vol. I, pp. 441–442.

matter arranged by counsel on the proposition of Sir Roundell Palmer." [1]

The Agent of the United States was himself an excellent lawyer. To no more competent hand than his could have been entrusted the office of penning the final word, at this troublesome juncture, upon the vexed question of damages. The situation was not a happy one, but it was inevitable. In time of war the United States is usually a neutral. There is an extensive coast-line, not easily guarded for the maintenance of strict neutrality. It was for the interest of the United States at Geneva to see to it that any rule of damages receiving the sanction of the Tribunal should not be a menace to neutrals, or expose them to extraordinary risks. Consequently the complaining party here, while laying before the Tribunal a statement of national (or indirect) losses to a very large amount, was not really desirous of compelling its opponent to make a payment therefor. Great Britain was perfectly well aware that upon the whole case no extraordinarily great sum was either expected or desired. Hence a plain duty rested upon English statesmen to quiet their people and explain to them how the question of the indirect claims could go before the Tribunal with no loss of dignity on England's part, and no danger whatever of her being compelled to pay an enormous amount of money.

At the same time, the Government of the United

[1] *MS. Archives, Department of State.*

States, following the provision of the Treaty that *all* claims be referred, had asked the Tribunal to pass upon the question of this larger class of alleged damages; and the President could not withdraw the request. The real difficulty, though not clearly apprehended by the average mind, lay in the nature of any and all claims for damages, based upon the alleged infliction of a wrong. In English and American law, a principle of damages in this field does not exist. That is to say, there is no settled principle in the sense that a rule, with any degree of exactitude, can be applied to the redress of an injury as between persons, not to speak of nations. To be sure, we are accustomed to consider the doctrine established, that in our efforts to arrive at some sort of an estimate of the compensation to be awarded to the party injured in actions of tort, — direct, and not remote or consequential, results are to be regarded. The law frankly admits that it can afford a reparation that is only approximate. How to measure that reparation is the problem; and it is a problem that must be pronounced practically insoluble. After all, the whole matter has to be left to the good sense of a jury, — to guess at it. [1]

That an immediate and direct effect of the escape of the Confederate cruisers from the ports of Great

[1] Upon my coming to the bar, I happened one day to hear Theron Metcalf (a great common-law jurist, who had then but recently left the bench of the highest court of Massachusetts) say, in the Social Law Library, Boston, that he had forty years ago given up trying to find out what is the law of damages.

Britain was to destroy the American carrying-trade, and thus inflict an injury of untold magnitude upon the people of the United States, cannot be gainsaid. It is obvious that England profited largely by this destruction. There would seem to be a measure of abstract justice in holding England responsible for losses of this character, caused by her culpable neglect. But the moment one undertakes to reduce this theoretical conception to a concrete rule, he sees how it refuses to take on a practical shape. Because you cannot draw the line, you are bound to conclude that, grievous as may be the cause for complaint, you will have to abandon any expectation of being able to determine amounts. In a word, you must be content with the reflection that the nature of the case does not admit of doing approximate — much less exact — justice.

England, as we have seen, was advised that the United States desired nothing to be awarded as national or indirect damages, but only that the Tribunal should in effect adjudge that the neglect of a neutral nation in time of war should not be visited with this species of penalty, — so to speak. Her uneasiness and alarm are to be accounted for only because of a fear that the neutral Arbitrators might depart from the views entertained by both parties, and adopt some new theory, to the unspeakable detriment of the offending nation. Such a fear was groundless. No wonder that Mr. Davis could write from Berlin (whither he had gone on a flying

trip) 17 May, 1872, to Mr. Fish that the impression in Europe is that England is not sincere in her opposition to the indirect claims.

"The correspondent of the Prussian *Cross Gazette* says it is believed in England that at least two of the neutral Arbitrators are disposed to regard with favor the claims of the United States. Whether this is or is not true, I cannot say. If it is, it will explain a request which Lord Tenterden made to me at Geneva, in December, to take steps for the appointment of new arbitrators, in the place of Count Sclopis, Mr. Staempfli, and Baron d'Itajubá, on the ground that these gentlemen did not speak English. I wrote you at the time that the request was refused as soon as made. It will also serve to explain rumors which have been floating about London, and which I believe to have some foundation, that the British Arbitrator has expressed himself with great freedom in terms hostile to the Tribunal, and favorable to a rupture of the Treaty." [1]

The two Agents, upon meeting at Geneva, 15 April, to exchange the Counter-Cases, naturally had something to say to each other, in unofficial terms, as to the outlook for the Treaty. Lord Tenterden most earnestly desired the success of the Arbitration. Acting under instructions, he lodged with the Secretary of the Tribunal a note of the announcement made, 2 February, by the British Government of their position regarding the indirect claims. This action he took, in order that

[1] *MS. Archives, Department of State.*

the filing of the Counter-Case by the British Government might not be treated as a waiver of that position.

Lord Tenterden's manner was both frank and conciliatory. He and Mr. Davis, as we have already seen, had become good friends, who could talk to each other if need be without reserve. To a remark by the latter that he had understood that the Lord Chief Justice was opposed to proceeding farther with the business, Tenterden replied that he believed the story to be "club-talk." He assured Mr. Davis that the last time he had talked with the Lord Chief Justice, Sir Alexander had expressed the strongest wish that the Arbitration should go on, saying that he had looked forward to closing a long career (in which he had got everything that he could wish) by a judgment in this case that was to hand his name down.[1]

It was fortunate for both countries that the two

[1] *MS. Archives, Department of State.* The reader has already been cited to an incident occurring in London society which shows that privately the Lord Chief Justice fully recognized the strength of the position taken in the American Case. The source from which a knowledge of this remark of Sir Alexander Cockburn has been derived, is entitled, in my judgment, to implicit faith. *Ante*, p. 148, note 2.

"I confess that for myself I had never expected to win on the *Alabama*, was doubtful of the *Florida* (which depends on a technical definition of commissioning and 'deposit of offence'), and, as I told you some time ago, had fears for the *Shenandoah* on account of the recruiting at Melbourne." Tenterden to Granville, 8 September, 1871, Fitzmaurice: *Life of Earl Granville*, vol. ii, p. 105.

Agents could fully trust each other, and that animated by a common purpose they could work together in perfect harmony.

Says Mr. Davis: —

"After disclaiming on each side the right to speak officially, and after asserting that what each might say to the other was purely personal, and after considering various plans for overcoming the dead-lock which had arisen, Lord Tenterden proposed, and I agreed to it, that we should each write unofficially to our chiefs at home, suggesting whether it might not be possible 'to have the Arbitrators come together of their own motion before the 15th of June, for the avowed purpose of considering, in advance of argument, the general question of liability for indirect damages.' I so wrote to Mr. Fish, and I presume he did the same to Lord Granville." [1]

Henceforward the story of what was going on between the two Governments, down to the date of the meeting of the Arbitrators (15 June, 1872) must be told in the fewest words. Attempts were made to come together and save the Treaty. The Legations at London and at Washington were kept busy at all hours of the day and night. The interchange of notes and telegrams was incessant. More than once General Schenck was called from his bed to decipher a cablegram, and hurry a copy of its contents to Lord Granville. The latter — one of the most amiable of men — was frequently closeted with the

[1] *Mr. Fish and the Alabama Claims*, p. 97.

General, both hoping that the tangled skein somehow could be unravelled.[1]

Mr. Fish and Lord Granville were each compelled to recognize the condition of home politics under which this divergence had arisen, and under which it continued. The expectations of the people in one country, as well as in the other, had to be met and most scrupulously considered. It was the year of a Presidential election, and General Grant was a candidate for reëlection. In England, the political opponents of Mr. Gladstone were not unwilling to see him put into an embarrassing position, though it is but simple justice to say of them that they appear to have throughout acted in an honorable and patriotic manner.

Lord John Russell, whose hostility to the Treaty had been undisguised from the first, had given notice

[1] "I send you to-day Lord Granville's voluminous reply, with the accompanying printed 'Memorandum.' It lost us some sleep, not through the power of the argument, but in getting copies made in time to hurry everything away by the mail of yesterday." MS. Letter, Schenck to Davis, 22 March, 1872, *Archives, Dept. of State.*

At times the prospect was gloomy indeed. One night, or rather early one morning, General Schenck came home nearly worn-out and wholly dispirited. He threw his hat down and exclaimed, "It is all over. This is the end of the Treaty." "Very well, sir," replied Woodhull, his ardent young secretary. "We shall fight Great Britain; and, thank God, we are ready for it!"

Among the many callers at the Legation there appeared one day a figure in a long cloak — a fine, intellectual face. The visitor had an idea or two to communicate as to the means by which peace could be preserved between the two countries. It was the poet laureate — Alfred Tennyson.

(22 April, 1872) that he would move an address praying Her Majesty to give instructions that all proceedings before the Geneva Arbitrators be suspended until the claims included in the Case of the United States — "which are understood on the part of Her Majesty not to be within the province of the Arbitrators — be withdrawn." [1] With all the serious consequences that threatened to follow upon the rupture of the Treaty, it must be admitted that what hindered the two Governments from acting together really amounted to little else than a punctilio.

After fruitless effort to reach a result by the customary diplomatic means, Great Britain suggested that the Treaty be amended, so as to remove the subject of the indirect claims from the field of controversy. It was proposed, in substance, that the United States should make no claim before the Tribunal in respect to indirect losses, while both Governments should agree that their conduct in future should be guided by the principle that the national losses stated in the Case should not be admitted as growing out of the acts committed by vessels by reason of the want of due diligence in the premises in the performance of neutral obligations.

The time was late in the session, and Congress was crowded with business. Both Houses had voted that they would adjourn on the 29th of May. But the urgency of the situation demanded that at least

[1] Fitzmaurice: *Life of Granville*, vol. ii, p. 95.

the proposed plan be tried. Accordingly, the Government of the United States accepted the proposal.

There was an earnest effort made at Washington to carry to a successful result this eleventh-hour project. The majority (Republican) members of the Senate Committee on Foreign Relations met at the White House — an unusual proceeding — and it became fairly well known what kind of an amendment could be passed through the Senate. Unfortunately, an enterprising journal of New York City [1] had succeeded in laying hands upon a copy of certain confidential documents sent by the President to the Senate on the 13th of May, and it published the text in full. The complications thus engendered brought about the defeat of the undertaking.

A debate was carried on for a part of four days, in secret sessions of the Senate, upon the language of the Article, as to which the two Governments had come to an agreement. A proposal of so vital an importance as the formulation of terms to be adhered to in the future by the United States, in the event of war between other powers, required most rigid scrutiny, as well as a full and deliberate discussion. Finally, the Senate consented to the proposed amendment, after changing the text, not extensively, but in a material point. The change proved fatal. The Government of Great Britain did not agree; and there was no time left for further consideration by the Senate. In fact, the Senate would

[1] *The New York Herald.*

not upon any account have receded from its position.[1]

The question came under discussion whether the Arguments must, under the terms of the Treaty, be submitted to the Tribunal 15 June, or whether a long adjournment could be taken, with a view of filing the Arguments at a later day. On the 8th of June, only a week before the fated day, Lord Granville is writing to General Schenck, and suggesting that an agreement on the Supplementary Article to the Treaty might be arrived at, if sufficient time were given for discussion. Thus everything was uncertain, with only a dim hope that the Arbitration would go on. Upon the eve of leaving Paris, no one could foretell what was likely to happen.[2]

General Cushing, Mr. Evarts, and Mr. Waite, together with Mr. Beaman and the Secretaries, started from Paris in the forenoon of Thursday, the 13th, going by way of Dijon to Geneva. We dined at Dijon; and then pushed on as far as Macon, a fine old town, where we secured comfortable lodgings. We were astir betimes the next morning; when the sun had been up for two hours, we were off. We arrived at Geneva about eleven o'clock in the fore-

[1] *Gen. Arb.*, vol. ii, p. 526, where the reader will find the text of the proposed article in its original form, and as amended by the Senate.

[2] For myself I hesitated about taking the trip, it being the general expectation that our party would all be back at Paris within a very few days. At the last moment I decided to go.

noon, to learn that the Arbitrators and the English party were already on the ground.

No one was likely soon to forget that period of suspense. We had come, Agent, Counsel, and a little band of young helpers — one and all girt for the contest. But who could declare that the trumpet would sound for the fray?

## CHAPTER VII

### THE TREATY SAVED — THE ARBITRATION GOES ON

WHEN a boy I from my reading had somehow gained an idea that the scenery of Switzerland was the exclusive property of Englishmen. Those were the early days of Alpine climbing, and of the Albert Smith lecture, — long before the enormous tide of travel had set in from this side of the Atlantic, and before the "Playground of Europe" had become as familiar to Americans as Broadway or Pennsylvania Avenue. My youthful delusion, let me add, had not wholly worn away; and now that I was setting foot in the streets of Geneva, I found myself wondering whether the first John Bull in knickerbockers whom I might chance to meet would not impress one with an air of his lordly proprietorship.

Because of her political situation, remote from the influence of other powers, the negotiators of the Treaty of Washington had chosen Switzerland as the country best fitted to furnish a locality for the sessions of the great Tribunal. By way of compliment to the Swiss Federation one of their sturdiest patriots — an ex-President — was asked to serve as Arbitrator. Naturally enough, their largest city came to be selected as the place where the Tribunal should hold its meetings.

Nature has been generous in her gifts to Geneva. Seated at the foot of a noble lake, whence issues the swift-flowing Rhone (here crossed by numerous bridges), her borders in one direction carry the eye to the snow-capped summit of Mont Blanc, and along the inspiring ranges of the Alps. The country round-about is beautiful. One's first impression of Geneva (at least so was mine) is most favorable. Here were living nearly one hundred thousand souls; here were busy manufactories to be seen on every hand; jewellers' shops with their attractive windows; streets crowded with tourists; well-shaded parks, and at the quays excursion-boats, with their bands discoursing music — all a scene of no little stir and bustle. But the animation turns out to be not of the kind that lasts for all day long. Indeed, it did not take the first twenty-four hours to discover that all this liveliness was transitory, and that the normal tone of Geneva is that of staid conservatism.

It was not a mere fancy that about the tall, sombre houses of the old part of the town there seemed yet to linger a flavor of John Calvin, as if to rebuke modern haste and frivolity. Nor was it strange that one felt sensible that there was lurking in the memory the answer of Talleyrand to the query, "Is it not dull in Geneva?" "Yes, especially when they amuse themselves." But we young fellows from across the sea were going to like Geneva — and we did. When we left it, there was just a tinge of reluctance — and we were carrying away with us none

other than exceedingly pleasing memories of the town and of its people.

Upon our arrival our party took quarters at the Beau Rivage, where Mr. and Mrs. Davis had for several days been installed. Spacious, well-appointed, and admirably kept, this hotel, standing on the bank of the lake, a short distance from the built-up portion of the city, commanded a delightful view. There were verandas on the lakeside that afforded a pleasant place to sit of an evening. Most of the guests at this hotel were American travellers.

Here the Waites remained during their entire stay at Geneva. Mr. Cushing sojourned here for a month — and I with him — and then we removed to Pension Bovet, a mile or more distant, on the Quai des Eaux-Vives, a fine, old house, with a large garden attached. It was known as the Merle d'Aubigné place, the home for years of that distinguished pastor, professor, and author, who here wrote the "History of the Reformation." Mr. Evarts, together with his family, occupied a villa a few steps from the Beau Rivage, farther up the Lake. This establishment, which could boast of small but well kept and attractive grounds, was presided over by Mrs. Evarts, who, with the aid of her daughters, made it an American "home," where a simple and genuine hospitality was generously dispensed.

Mr. Adams, with Mrs. Adams, Miss Mary Adams, and Mr. Brooks Adams (his son and Secretary), was living at a handsome place out in the country,

elevated above the Lake, and reached by a short drive from the town.

Our English friends (including the Lord Chief Justice) took lodgings nearer the compact part of the city, at the Hôtel des Bergues, on the bank of the Rhone, where it issues from the Lake, close to the bridge. It would seem from the complaint which Lord Selborne has left upon record that the experiment of their living together in town under one roof was not quite a success — for though, of course, they constituted "a happy family," the situation they had chosen proved to be far from agreeable because of the continual noise from the street. In fact, Lady Laura Palmer styled Geneva "the noisiest town she ever was in." The arrangement was decided upon, it seems, for convenience of work. "We might have escaped from these annoyances, . . . if we had taken, as some of the Arbitrators, and the principal persons among the Americans did, one of the numerous villas on the lakeside." [1]

The Canton of Geneva had put at the disposal of the two governments, for the accommodation of the Tribunal, a room, of handsome proportions, in the ancient Hôtel de Ville. It bore the name of "Salle des Conférences," from the circumstance that here it was that officials of the City, as well as those of the Canton, held their business sessions. Since 1872 it has been known as "Salle de l'Alabama." A tablet bearing the following inscription is now to be seen there: —

[1] *Memorials*, vol. i, p. 243.

LE XIV SEPTEMBRE MDCCCLXXII
LE TRIBUNAL D'ARBITRAGE CONSTITUE
PAR LE TRAITE DE WASHINGTON
RENDIT DANS CETTE SALLE
SA DECISION SUR LES RECLAMATIONS
DE L'ALABAMA
AINSI FUT REGLE D'UNE MANIERE PACIFIQUE
LE DIFFEREND SURVENU ENTRE
LES ETATS UNIS
ET LE ROYAUME DE LA GRANDE BRETAGNE[1]

Just before our coming, a Convention of the Geneva Cross for the succor of wounded in time of war had been holding sessions in this hall, which had retained the decorations — consisting of the flags of several nations — tastefully arranged. It was a hall, with its retiring-rooms, well adapted to the needs of the Tribunal. A dais ran across one side, on which seats had been arranged behind desks, — as is the fashion when Judges sit in banc. The space in front was for the use of the Secretary, and there were desks at either side for the Agents of the two Governments and like conveniences for Counsel. Windows looked upon a garden. I remember how Nature smiled in this bit of open space; for flowers were blooming, and sweet odors drifted in, as if to presage harmony.

[1] "They tell me that almost all American visitors go to see the room, but very few English." MS. Letter, 19 February, 1907, from Francis B. Keene, Consul of the United States at Geneva; to whom I am indebted for a copy of the inscription.

At the hour of noon, on Saturday, the 15th of June, 1872, the Tribunal opened its third, and all-important, conference. The five Arbitrators were in their seats. The Secretary (M. Favrot), the Agent of Great Britain (Lord Tenterden), and the Agent of the United States (Mr. Bancroft Davis) were in attendance. The Counsel for Great Britain (Sir Roundell Palmer),[1] with his Assistant (Professor Mountague Bernard), and the Counsel for the United States (Messrs. Cushing, Evarts, and Waite) were likewise present, as was the Solicitor for the United States (Mr. Beaman). All the private secretaries attended, both English and American, — Messrs. Sanderson, Markheim, Lee-Hamilton, Villiers,[1] and Langley, from England; and Messrs. Adams, Davis, Hackett, Peddrick,[2] and Waite, from the United States. No one else had been admitted.

The Arbitrators were a fine-looking body. They presented the not unfamiliar appearance of a row of Judges; but looking closer one missed that "homogeneity" which characterizes a bench whose members are all of one state or country. Here the Teu-

[1] "Sir Francis Villiers is still British Minister at Lisbon. He was at one time Assistant Under-Secretary in the Foreign Office, and was very popular there, as indeed he is sure to be wherever he is. Sir Thomas Sanderson is now Lord Sanderson, and an efficient member of the House of Lords, where he takes a great interest in the work of that body, and, enjoying very good health, is able to render active service. He was, as you know, an eminently efficient Under-Secretary." James Bryce, British Ambassador to the United States: MS. Letter to Hackett, 18 August, 1910.

[2] Secretary to Mr. Evarts.

ton sat by the side of the Latin. The racial contrast was too pronounced to escape observation.

The President, Count Sclopis, a man past seventy years of age, was of a large frame, and of a courteous and dignified manner — his exterior and his bearing appearing altogether such as would seem to justify his holding so eminent a position.

Upon his right sat Jacques Staempfli, of the Canton of Berne, at three separate times President of the Swiss Confederation; stout and of a swarthy complexion, staid and resolute, plain of feature, his mien indicating a resolute independence — a man of the stuff of which Carlyle would have had his heroes. Upon the President's left was the Baron (soon to be Viscount) d'Itajubá, of Brazil, an embodiment of gentleness, small, slender, and of an unusually refined appearance. His gold-bowed glasses gave to him the look of a college professor, as indeed he once had been, while the warm coloring in his face told of the climate of his native country. He looked to be an accomplished, well-bred man of the world. At the extreme right sat Mr. Charles Francis Adams, short of stature, of a ruddy complexion, and quite bald. He bore himself as one who was perfectly self-contained. His resemblance to his distinguished father, President John Quincy Adams, as seen in well-known portraits, did not seem at all imaginary, as the Arbitrator from the United States sat bolt upright that day, awaiting in perfect composure the orderly procedure of the Tribunal.

The Lord Chief Justice of England, Sir Alexander Cockburn, occupying the end seat to the President's left, was a man whose like is not often seen. He, too, was short of stature, and likewise of a complexion somewhat ruddy. He had a head like a bullet, and the eye of an eagle. Quick and nervous, his unceasing activity was in marked contrast to the almost rigid demeanor of Mr. Adams. It would not be true to declare of Sir Alexander that not for a moment did he remain still; but now that I behold him through the vista of years, alive and alert at one end of the highly dignified row of Arbitrators, it almost seems as if I had never known him to be quiet. Of the five, Cockburn was by far the most interesting figure. His form, his glowing countenance, and his activities, I must confess, fill the largest place in my memory of the conferences which I had the privilege of attending.

Before proceeding to narrate what took place at this critical hour, and during the next four days, fateful as they were of results, let me endeavor to present a brief description of the several personages thus brought together in a conclave, the issue of whose consultations was destined to mark in history the beginning of a new epoch.

At the opening Conference, held at Geneva, 15 December, 1871, Mr. Adams had proposed that Count Sclopis, being the Arbitrator selected by Italy, the Power first named in the Treaty after the United States and Great Britain, should preside. Sir

Alexander Cockburn seconded the proposal, and Count Sclopis was unanimously chosen. He proved himself conspicuously worthy of the distinction.

Frederic Sclopis (1798–1878), at the time he was named to serve at Geneva, was Minister of State and Senator of the Kingdom of Italy. He lived at Turin, vigorous and hearty at the age of seventy-three. He was a lawyer, statesman, and author. He had published books in French, "but his most important works are in Italian; and above all, the learned 'Storia della Legislazione Italiana,' the last edition of which, in five volumes, is a most interesting and instructive exhibition of the successive stages of the mediæval and modern legislation of all the different States of Italy." [1]

Large and imposing of stature, Count Sclopis exhibited a demeanor at once benignant and fatherly. His address became his high rank. So unaffected and kindly was his manner that he quickly gained the esteem of us all.

Mr. Jacques Staempfli (1820–1879) was born of German-Swiss stock in the Canton of Berne. He came to the bar in 1843, and was an advocate and journalist. He soon found his way into public life, and with ability filled several offices. In 1856 he was elected President of the Swiss Federation; also in 1859, and again in 1862. He was a member of the National Council when named as Arbitrator.

No one could look at Mr. Staempfli without at

[1] *The Treaty of Washington*, p. 79.

once recognizing in him a man of a strong and rugged nature. He was of medium stature, thick-set, and appeared like an athlete. When you heard him speak, you would say that here is an earnest seeker after truth, bound to solve a problem in his own way, and to stick to a conclusion with pertinacity. He exhibited the quality of self-reliance, such as might be expected in one who had risen by his own unaided exertions to posts of distinction. He said but little, but what he did say could not be misunderstood. He acted like a man of great executive force. No one in public life could have been more respected in Switzerland than he; and his bearing in the Tribunal inspired confidence and won respect.

After serving upon the Tribunal he returned to his labors at the Swiss Capital. Later Mr. Staempfli resigned his position as Federal Councillor, and became a Director of the Federal Bank, where he appears to have met with reverses that clouded his later days. He died 15 May, 1879. Of plain democratic manners, he was highly esteemed by the people among whom he lived.

"I have conversed with some of the most competent men in the Swiss Federation to form a judgment about Staempfli's career and character. Without exception, it is agreed that he was a man of unusual talents, and unreservedly consecrated to the service of his country. It is true that his business affairs were not successful in the last years of his life; but this is said to have been owing to his devotion to the public service, and his confidence in

others to whom he confided his private affairs. One of my informants assures me that Mr. Staempfli is still spoken of by teachers in the public schools as a model statesman and a patriot. His memory is certainly held in high regard by the Swiss people." [1]

Baron d'Itajubá (who during the progress of the Arbitration was made a Viscount) at the time of his appointment was serving as Minister of Brazil in France. He had previously been Minister in other countries. When a very young man he was Professor at the Law School of Olinda (Pernambuco). During his long career in the foreign service of his country he had enriched his mind by a still more profound study of the principles of international law and of the precedents of diplomacy. His experience in Europe and his ripe scholarship well fitted him to pass upon the questions to be presented at Geneva. His manners were extremely polished. He spoke in a low tone — always showing deference to his colleagues. Lord Selborne has scant praise for the neutral Arbitrators who could not on all points find in England's favor. He says of d'Itajubá: He was "a small man, of good figure, cheerful looks, and agreeable conversation; not learned, but altogether a gentleman." [2] His full name was Marcus Antonio d'Araujo. His son, Antonio d'Araujo, accompanied him as Secretary; a young man of pleasing address,

[1] MS. Letter of Honorable David J. Hill, American Minister, Berne, 15 June, 1904.

[2] *Memorials*, vol. i, p. 253.

who subsequently (1885) came to Washington as Minister from Brazil.[1]

By the terms of the Treaty, the United States and Great Britain each named an Arbitrator. Whatever objection may have existed in theory to putting upon the Tribunal a representative from each of the parties to the controversy, there can be no doubt that the plan proved to have been wisely conceived. Thus each nation through its Arbitrator was enabled to have some one present who could explain from personal knowledge such points of difficulty as might arise from a lack of familiarity with the language and with the political history of the two opposing countries.

In his dissenting opinion (of which something will be said in a later chapter) Sir Alexander Cockburn, after citing certain statements in the Argument of Counsel of the United States, says: —

"Sitting on this Tribunal as in some sense the representative of Great Britain, I cannot allow these statements to go forth to the world without giving them the most positive and unqualified contradiction." [2]

For this characterization of himself the Agent of

[1] Besides being Minister to the United States, the younger d'Itajubá served as Minister to Spain, to Italy, to France, and to Germany. At the last-named post he died, in 1897. "I recollect his father telling me, in 1873, how useful he had been to the Geneva Court in drafting some difficult point of the Geneva Award." MS. Letter (9 December, 1907) of Joaquim Nabuco, Brazilian Ambassador, E. and P., to the United States.

[2] *Gen. Arb.*, vol. iv, p. 286.

the United States takes Sir Alexander to task,[1] and Mr. Fish does the same.[2] Sir Alexander, however, was entirely justified in using the language that he did. It is hardly fair, as Bancroft Davis does, to quote this expression as in any sense a confession that he sat on the Tribunal "not as a Judge." [3]

In respect to both Charles Francis Adams and Sir Alexander Cockburn, there is little need here of reciting anything, except in the very briefest terms, as to the record of their life-work before taking seats upon this Tribunal.

Mr. Adams (1807–1886) was the son of President John Quincy Adams. He was graduated at Harvard in 1825, and for a short period studied law in the law-office of Daniel Webster, at Boston. From 1831 to 1836 he served in the Legislature of Massachusetts. He early took an interest in public affairs, and became identified with the anti-slavery wing of the Whig Party. In 1848 he was candidate for Vice-President upon the Free-Soil ticket, which bore the name of Martin Van Buren for President. In 1858 he was elected to Congress and reëlected in 1860. It may be mentioned that, at the time he was engaged as an Arbitrator at Geneva, the name of Mr. Adams was brought prominently before the public as a possible nominee of the Democratic National Convention for President.

His invaluable service to the cause of the Union,

[1] *Gen. Arb.*, vol. Iv, p. 12. [2] *Ibid.*, p. 547.
[3] *Ibid.*, p. 12.

as every one will recall, was rendered in the capacity of Minister of the United States to Great Britain from 1861 to 1865. His career at that post has become a part of the history of his country.

Looking back over the events of that memorable period, and viewing the stately and brave figure at St. James's, we are at a loss to name a public character other than Mr. Adams, who could have stayed there and displayed the patience, almost infinite, that he did, combined with a superb courage and inflexibility of will. It is not, I am sure, partiality for my own countryman that prompts me to say that Charles Francis Adams stood foremost in the Geneva Tribunal for strength of intellect, vigor, and above all, for an exhibition of "the cold neutrality of the impartial judge."

If Mr. Adams looked to be an intellectual force, surely the Lord Chief Justice of England presented the appearance of a man of remarkable talent. The latter was indeed a most interesting figure.

Alexander James Edmund Cockburn (1802–1880) came of a good family. He was born in France of a French mother. An uncle of his was that Admiral Cockburn of the British Navy, who is remembered in the United States in connection with the burning, in 1814, of the Capitol at Washington. The future Chief Justice entered at Trinity, Cambridge, in 1822, and came early to the Bar. He could speak fluently French, German, Italian, and Spanish. In 1850, upon the occasion of the severe criticism of

Lord Palmerston's conduct in the Don Pacifico affair, Cockburn delivered a brilliant and effective speech in the Commons, in defence of the Administration. This display of his powers as a debater led to his appointment as Solicitor-General. In 1851 he became Attorney-General. In 1856 he was made Chief Justice of the Common Pleas, and three years later Chief Justice of the Court of Queen's Bench.

Quick and ready, he excelled as a *nisi prius* judge. He presided over the Tichborne trial, where his charge to the jury consumed eighteen days. It filled sixteen hundred pages, as afterwards printed in two volumes. Sir Alexander exhibited a taste for literature. He had collected material for a book on the authorship of Junius; and it is understood that he had made some progress in the work, but he did not live to complete it. He was a close friend of Charles Dickens. Greatly liked by his intimates, he was a *raconteur* of no little note, and a favorite in society.

The friends of Sir Alexander Cockburn have credited him with genius; and the claim perhaps is not to be denied. A striking personage he was. Rather small, of a ruddy complexion, quick of movement, even to restlessness, one saw at Geneva little in his bearing of the calm, judicial dignity which is commonly supposed to characterize the occupant of so lofty a position as that of the Lord Chief Justice of England. It is not uncharitable to say of him that, in discarding wig and gown, to become an Arbitrator,

Sir Alexander seems to have laid aside also the greater part, if not all, of that self-control, and chastening sense of responsibility, which mark the judge. In fact, he disported himself as if ill at ease with his colleagues. He talked a good deal, and delivered his jerky, incisive sentences in a tone at times by no means conciliatory.

Of this remarkable man Lord Selborne says: —

"He had gifts approaching to genius. French on his mother's side, with a perfect knowledge of that language, and other fine accomplishments, he had a Frenchman's clearness, vivacity, and mobility of intellect. A small, spare man, of good figure, with light red hair, sanguine complexion, and refined and expressive angular features, his air was marked by a consciousness of power. . . . His life had been irregular; his *amour-propre* was strong, and his feelings were quick and excitable. To obtain influence with him required some tact, allowance for his humours, and study of his character; but those who once gained his good-will, found him warm-hearted and generous. On the Bench as at the Bar, he was splendid, rather than learned or profound; but he was able to make himself master of any subject which gave scope for his powers, and took pains to do so." [1]

This estimate appears to be well considered and just. There could be no doubt whatsoever of the extraordinary power possessed by the Lord Chief Justice of successfully going through the process of what is known as "cramming." There are many

[1] *Memorials*, vol. i, pp. 495–496.

indications that when he arrived at Geneva his mind had been made up that the Arbitration would not go on. He could have brought away from England only a very slight knowledge of the details of the case. Consequently, when he found that the Treaty was not to be broken, he straightway precipitated himself into a most exacting study of the subject-matter. Day and night he worked prodigiously, giving not an hour to relaxation, and getting through an amount of labor that was simply immense.

Altogether, while the Lord Chief Justice may not be pronounced a happy selection for the fortunes of Great Britain, he showed himself to be an extraordinary personage. Of the many eminent men gathered at Geneva, no one succeeded in leaving a deeper impression of himself upon the record of this august procedure, or upon the memories of those who participated therein, than this indomitable representative of the power and the greatness of England.

The Secretary of the Tribunal, M. Alexandre Favrot, was a man of slender figure, whose demeanor was quiet and gentle. He was a native of Porrentruy in the Jura part of the Canton of Berne. He spoke English perfectly, having resided for several years in England. For a long period he had been professor of French in the Cantonal school at Berne. At the time of the religious conflict in the Jura, M. Favrot was made Prefect of the District of Porrentruy, an office which he held until his death, several years

ago.[1] M. Favrot performed the duties of his office with fidelity, and in a manner that was pleasing to all with whom he came in contact.

England sent one of her greatest lawyers to defend her cause before the Tribunal, in the person of Sir Roundell Palmer (1812–1895). He was graduated at Trinity, Oxford, in 1834, called to the Bar in 1837, and made Queen's Counsel in 1849. He became Solicitor-General in 1861, and Attorney-General in 1864. After his service at Geneva, he was raised in 1872 to the peerage, with the title of Lord Selborne, and was made Lord Chancellor, a position which he held for a brief term only, until the Gladstone Ministry, in 1873, went out of office. He again held the seals as Lord Chancellor—from 1880 to 1885.[2]

Probably no man in the Kingdom had bestowed a closer or more conscientious study upon the questions involved in the Arbitration than Mountague Bernard, Professor of International Law at Oxford, who was chosen by the British Government as an

[1] MS. Letter of Francis B. Keene, United States Consul at Geneva, 23 February, 1907.

[2] Sir Roundell was an ardent churchman. He is known as the editor of *The Book of Praise from the Best English Hymn Writers*. A volume of autobiographical writings, in the shape of *Memorials* from his pen, appeared in 1898, under the editorship of his daughter, containing much interesting material regarding public affairs in which he had taken part. Sir Roundell looked for all the world the cultivated, high-bred English gentleman that he was. A man of simple and agreeable manners, though of rather a serious cast of countenance, he was liked by everybody.

assistant to Sir Roundell Palmer. He did his full duty in that responsible office. Of a spare figure, with a slight stoop, Mountague Bernard (1820–1882) wore the look of a scholar. He was shy and retiring. We younger men of course met him socially, but our acquaintance with him, as I recall it, did not reach that degree of intimacy that characterized our intercourse with the others of the English party (Sir Alexander excepted) because of a reserve, whose nature we doubtless misunderstood. At all events, his intellectual face and gentle ways have left, I find, a most pleasing impression on my memory.

Mention is made elsewhere in these pages of his very able work, "A Historical Account of the Neutrality of Great Britain during the American Civil War" (London, 1870), which, aside from its learning, reveals in the author a man of high ideals and of singular purity of character.

It seems that Bernard had in his early days been a pupil of Palmer, and the two were always warm friends. Sir Roundell says of him in terms which it is a special pleasure to quote:—

"Mountague Bernard (who never married) was a student all his life, dividing his later years, unless employed on any public duty, between Oxford and a house called Over-Ross, near Ross in Herefordshire, where some of his family lived. In the beautiful churchyard of Ross, overlooking the Wye, his remains rest. He was a man of singular gentleness, with a wide range of intellectual interests; never putting himself forward, but always ready

for any duty which he could perform.[1] He was associated with Lord Blatchford, Thomas Henry Haddan, and Dean Church in the foundation of the *Guardian* newspaper; and with them, was a frequent contributor to it, and helped to maintain it in a higher, more temperate, and more religious tone than has usually been found in the organs of ecclesiastical parties. He was also an able and clear political and judicial writer, and exercised over many minds, without seeking it, a wholesome influence."[1]

The English Secretaries were every one of them fine fellows, ready at once to get on the best of terms with us young men from "the States." They were kept very busily at work,[2] and we likewise had duties to perform that frequently left little time for leisure; but for all this, all of us were much thrown together, with the result that we soon learned to respect and esteem each other. Sanderson who retired as Sir Thomas Sanderson, after a life-work of usefulness as Under-Secretary at the Foreign Office is now Lord Sanderson. Lee-Hamilton died at Florence in November, 1907, leaving a reputation as a writer of sonnets; while Sir Francis Hyde Villiers became in 1907 Minister Plenipotentiary at Lisbon.

Lord Selborne says of these young men: —

"Mr. Eugene Lee-Hamilton and Mr. Fitzroy Langley

[1] *Memorials*, vol. I, pp. 251–252.

[2] "There have been no office-hours here, all hours have been office-hours, from early morning till late at night." Tenterden to Granville, 14 September, 1872, *British Blue Book*, "North America," No. 1 (1873), p. 379.

were specially attached as translator and secretary to myself; and Mr. Markheim, a Fellow of Queen's College, Oxford, who with Mr. Sanderson performed similar duties for the Chief Justice, . . . afterwards reinforced by another promising young man from the Foreign Office, Mr. Frank Villiers, son of Lord Granville's predecessor [Lord Clarendon]. . . . Mr. Sanderson made all our arrangements for us and was one of the most useful and popular members of our party. . . . Mr. Langley (since dead) was of Irish birth, sprightly and intelligent, and never sparing himself trouble. Mr. Hamilton was a man of a bright, delicate spirit, and a very accomplished linguist. He passed soon afterwards into the diplomatic service, in which he had every prospect of rising; but his health gave way and he was obliged to leave it, and afterwards took to poetry." [1]

[1] *Memorials*, vol. I, pp. 248–252. A curious expression this—"took to poetry"; much as one would say of a man that "he took to drink." As the result of an accident, about 1873, poor Lee-Hamilton was condemned to an almost living death. He suffered intensely, confined all the while to his couch. His indomitable will gained a victory, so that although enduring exquisite pain, he turned his thoughts to a closer sympathy with the experiences of his fellow men. He composed lines, instinct with deep feeling and pervaded by a calm and hopeful spirit of interpretation of life's vicissitudes. In 1891 he published *The Fountain of Youth*, and in 1894, *Sonnets of the Wingless Hours*. The American reader will find a selection of his sonnets in Stedman's *Victorian Anthology* (1895).

"I know not in what metal I have wrought;
Nor whether what I fashioned will be thrust
Beneath the clouds that hide forgotten thought;
But if it is of gold it will not rust;
And when the time is ripe it will be brought
Into the sun and glitter through its dust."

An appreciative tribute to Lee-Hamilton's powers as a writer of

H. W. G. Markheim was a man of many attractive traits, a cultivated scholar, who was highly esteemed by his associates at Oxford. He did wonderful work as a translator. I came to know him more intimately than any of the others of the English party. We took walks together, and talked on various topics, other than the object of our stay in Geneva. Markheim had lived in Paris through the Franco-Prussian War — an experience that furnished the occasion of his writing a clever book entitled "Inside Paris during the Siege." It has been translated into German, French, and Italian. He also translated into French "The Causes and Conduct of the South African War, by Dr. A. Conan Doyle," 1902. Mr. Markheim died 22 November, 1906.[1]

Although somewhat out of the order of time, here would seem to be a convenient place to mention, in the fewest words possible, some of the positions which members of the American party attained after their return home from Geneva.

Mr. Adams sought retirement. On the day of the last session of the Tribunal, he wrote: "I may hope to consider it an honorable termination to my pub-

the sonnet will be found in the November, 1907, number of *The Bookman*, written by Edith Wharton.

[1] Mr. Hildyard, of the Legation at Berne, also rendered valuable assistance. Both Tenterden and Sir Roundell, let me add, spoke in their official report in unqualified terms of the services performed by Mr. Lee-Hamilton.

lic career." [1] In his home at Quincy, Massachusetts, he occupied himself in arranging for publication portions of the Diary of his distinguished father. His was the supreme happiness of knowing that he had deserved well of the Republic, and that his countrymen gratefully held him in honor for what he had done.

Not long after returning home, Mr. Bancroft Davis was re-appointed Assistant Secretary of State. From 1874 to 1877 he was Minister to Germany, a worthy successor at that Court of his uncle, George Bancroft. Upon resigning that office, and coming back to Washington, he became a Judge of the Court of Claims. At the request of President Arthur, he resigned his judgeship and served once more (for six months) as Assistant Secretary of State. He was then re-appointed to the Court of Claims. His services upon the bench (though not of long duration) were of conspicuous merit. In 1883 he left the Bench to enter upon the office of Reporter of the decisions of the Supreme Court of the United States. The duties of this office he performed for a period of nineteen years, to the entire satisfac-

[1] *Charles Francis Adams* (American Statesmen), by his son, Charles Francis Adams, p. 398. No more touching piece of biographical narrative than the brief chapter that in simple terms brings to a close this admirable sketch, has, so far as I recall, been written since Lockhart's *Life of Scott*. Mr. Adams's promise to give to the world "a larger and more detailed work" than this volume warrants the belief that the history of this period will be enriched by a contribution of permanent value.

tion of the Court and Bar. Among his publications Bancroft Davis is specially to be credited with "Treaties of the United States, with Notes," and "Mr. Fish and the Alabama Claims." The latter work, though comprised in a brief compass, as it was designed to be, contains matter of historical value that no other than the author himself could have furnished.[1]

Mr. Cushing resumed his law practice, on his return to Washington, employing his leisure hours at first in writing a book entitled "The Treaty of Washington." [2] In January, 1874, President Grant sent the name of Mr. Cushing to the Senate to be Minister to Spain, and the nomination was confirmed. About this time the Senate showed an unwillingness to confirm George H. Williams of Oregon, to be Chief Justice of the United States; whereupon the President withdrew the nomination, and sent in the name of Caleb Cushing for that office. It was an extraordinary step to seek to put at the head of the Supreme Court of the United States a man of seventy-four years of age. Besides,

[1] Bancroft Davis died at Washington 27 December, 1907, lacking only two days of being eighty-five years old.

[2] One morning, in Washington, an old acquaintance, who had been successful in the banking business, Mr. Moses Kelly, met Cushing on the street, when the following colloquy ensued: —

"Good morning, Mr. Cushing, how are you this morning?"

"Fairly well, except for a disease that old men have."

"Ah, what is that, Mr. Cushing?"

"Avarice," replied Cushing, as he passed on.

with all his ability and learning, Cushing was not regarded by those who knew him intimately as possessed of strong moral convictions. The doings of the Senate in executive session are secret, and no one has a right authoritatively to say upon what grounds a nomination is opposed or rejected. A letter written by Mr. Cushing to President Jefferson Davis in March, 1861, recommending a young man for a position was read before the caucus of the Republican Senators, and at Mr. Cushing's request President Grant withdrew his name.[1] Mr. Cushing

[1] For an estimate of Mr. Cushing and observations on his character, by one who had known him for years, the reader may consult *Sixty Years in Public Affairs*, by George S. Boutwell, vol. i, pp. 119–123. "The truth was, Cushing was destitute of convictions. . . . His purposes were not bad, and his disposition to aid others was a charming feature of his character. . . . He was too much inclined to adhere to the existing powers, and consequently he was ready to change whenever a new party or a new set of men attained authority. As an official he would obey instructions, and as an assistant in legal, historical, or diplomatic researches, he had no rival. He attained to high positions, and yet he was never fully trusted by any administration or party." *Ibid.*, p. 120.

A younger public man than Governor Boutwell and equally as shrewd an observer has expressed the opinion that the Senate in denying Cushing's confirmation acted "most foolishly and without reason." "He was one of the few public men whose merits have been under-estimated rather than over-estimated, and it will be many years before this country will see the equal of the learned, wise, genial, marvellous Cushing." *Address before the Grafton and Coos New Hampshire Bar Association*, by Senator William E. Chandler, 1888, p. 12.

The following extract from the remarks of Chief Justice Waite (13 January, 1879) upon the occasion of presenting to the Court the

went as Minister to Spain, where he served until 1877. He knew Spain well. When a young man he had visited that country, and later had written two volumes, "Reminiscences of Spain." At the Court of Madrid Mr. Cushing spoke the language with the ease and the correctness of the best Spanish scholars.[1] He came home and lived in retirement at Newburyport, Massachusetts, near his native town.

Mr. Evarts returned to his law practice in New York City. He was conspicuous, in 1875, as senior counsel in the Henry Ward Beecher trial. An elec-

resolutions adopted by the Bar in memory of Mr. Cushing, may fittingly be quoted here: —

'It was my fortune to be associated with Mr. Cushing before the Tribunal of Arbitration at Geneva, and I should be false to my own feelings if I failed to record an expression of gratitude for the kindness and encouragement I received at his hands during all the time we were thus together. He was always just towards his juniors, and on that occasion he laid open his vast storehouse of knowledge for the free use of us all. While assuming that our success would be his, he was willing that his should be ours. He knew that much encouragement can lighten the burden of labor, and never failed to give it when opportunity was offered. Whatever he may have been to others, to us who were with him at Geneva, he will be remembered as a wise and prudent counsellor and a faithful friend." 99 *United States Reports*, xi.

[1] "With some premonition, perhaps, that his own end was near (although he did not desist from projects of labor and study), Mr. Cushing, since his return from Madrid, a little more than a year ago, resided principally at his old home in Newburyport. The anchor of the storm-worn ship was to fall where first its pennant had fluttered in the breeze." Attorney-General Charles Devens (13 January, 1879), before the Supreme Court of the United States. *Ibid.*, xi.

toral commission was created early in 1877, to determine whether Hayes or Tilden should be declared elected President of the United States. Mr. Evarts was one of the most distinguished advocates who took part in the argument. President Hayes made him Secretary of State, an office which Mr. Evarts filled for the full term of four years.[1]

In 1881 he went as a delegate to the International Monetary Conference, held at Paris. From 1885 to 1891 Mr. Evarts was a Republican United States Senator from the State of New York. He is chiefly remembered in that office for his labors in connection with the establishment of the Circuit Court of Appeals, the statute providing for that important change in the judiciary system being known as the "Evarts Act."

A most remarkable turn of fortune was exemplified in the case of Mr. Waite. In January, 1874,

[1] After his usual fashion, Mr. Evarts scattered through the Hayes administration a goodly number of bright sayings, some of them still current at the Capital. I must find room for one or two.

As soon as Hayes was sworn in, a horde of office-seekers from Ohio swooped down upon Washington. "Mr. President," said Evarts, "I have heard a good deal about the Western reserve, but I have n't seen much of it here lately."

Coming into the building of the Department of State, one forenoon, on his way to his office, the new Secretary missed the elevator, which was just going out of sight, jammed with visitors. "The largest collections for foreign missions I have ever seen taken up," remarked Evarts dryly.

Hayes abolished the use, during his term, of wine at State dinners. It was Evarts who said, "Water flows like champagne at the White House."

while presiding over a Constitutional Convention in Ohio, news came that President Grant had sent Waite's name to the Senate to be Chief Justice of the United States. It was Bancroft Davis who had suggested to the President the eminent fitness of Mr. Waite for this exalted post. The nominee was immediately confirmed; and on 4th March following he took his seat upon the Bench of the Supreme Court. Here he proved to be in every respect worthy of the choice, a sound lawyer and a model executive officer. His personal qualities won the esteem and affection of Bench and Bar. It is to be observed that among the numerous heartfelt tributes paid by the Bar at his decease in 1888, upon the occasion of memorial exercises, none were more grateful than that in the Circuit Court of the United States for the District of South Carolina, expressing

"the sincere regard and affection we have cherished for him as a friend in the relations of private life; and which unitedly impel us to offer this truthful and honest tribute to the memory of a good man, a distinguished fellow-citizen, an upright, honest, learned, just, and incorruptible judge — one whose name and fame we shall hold in long and grateful remembrance."

Since the official acts of Mr. John Davis, Secretary to the Agent of the United States, were performed with an efficiency and a discretion looked for only in a man of ripe experience, it was hard to realize that he had but reached his twenty-first birthday after our party had been for some time in Paris.

Returning home, Mr. John Davis studied law. President Grant, in 1874, selected him for Clerk of the Court of Commissioners of Alabama Claims, a post demanding superior executive ability. This office Mr. Davis filled admirably. In 1882 he became Assistant Secretary of State. He was made, in 1885, a Judge of the Court of Claims. Here he gained reputation in a series of opinions dealing with the principles involved in adjudicating upon the French Spoliation Claims. A gentleman of fine social qualities, and of a delightful bearing, Judge Davis had won a host of friends, who lamented his early death, at Washington, in 1902.

But to return to our narrative of events. The reader of the preceding chapter must be impressed with the fact that the opening of the conference was marked by an intense anxiety on the part of every individual present, — an anxiety that was felt in full force at Washington and London, since both capitals believed that what should be said at this juncture might even decide a question of peace or war. The doors were closed to all persons other than those officially in attendance. Outside, at the entrance of the Hôtel de Ville, there stood in waiting a band of reporters, representing the great journals of England and of the United States, as well as Continental newspapers, — trained men, alert and eager to catch the first word that they could flash over the wires to an expectant world.

The scene presented has ever since been indelibly fixed in my memory. I shall not attempt further to describe it. Every man realized the gravity of the occasion. It does not seem possible to add to the measure of dignity that a free people are accustomed to witness in a high court sitting in banc, whether in England or America; but the Tribunal at Geneva possessed the features of a quasi-diplomatic body, as well as those belonging to a high court of the realm. We, who sat within the bar beheld in each one of the five dignitaries facing us the representative of a nation. In a certain sense, too, a great people — one of the greatest upon earth — were here, about to be brought to trial. No wonder that the proceedings now to be entered upon by eminent judges of diverse nationalities and speech, should wear an air of solemnity greater than that which is wont to characterize the deliberations of the highest judicial tribunal of any single country. Yet, notwithstanding the imminence of a mighty struggle, there prevailed a stillness and a calm, and one could note a demeanor of unaffected courtesy on the part of those whose duty it was to speak that was reassuring, for it seemed after all to declare in so many words, "Here are we — a company of gentlemen: *Noblesse oblige.*"

Mr. Davis arose, and presented in duplicate a printed Argument, in English (and for his convenience a French translation of the same), to each Arbitrator. All eyes were turned upon Lord Tenterden,

who, in the ordinary course of procedure, would have followed this act by delivering in like manner the Argument of Great Britain. The British Agent, while a most faithful official and excellent man, had not the presence of Mr. Davis. Lord Tenterden's manner was not in the least degree imposing. In a plain business way Tenterden offered a note, expressing regret that the "differences" between the Governments had not yet been "removed," and asking that the Tribunal adjourn for a period long enough to enable a supplementary convention to be concluded and ratified between the two countries.

The thought flashed into our minds that, if such an adjournment were taken, it could have only one meaning — a rupture of the Treaty.

Mr. Davis announced that he was unable to state what the views of his Government would be, until he knew for how long a time an adjournment was asked. Lord Tenterden, in reply, named eight months. Mr. Davis, saying that he would have to learn by telegraph the views of his Government, asked an adjournment for two days, till Monday, the 17th. The request was granted, and the conference adjourned. It was all over in a few minutes. No actual rupture, — yet! A breathing-spell, and a possible chance to save the Treaty.

Mr. Fish and General Schenck with admirable skill had brought the subject-matter of the "indirect claims" safely down to the date of the opening of the conference. The American Minister had discharged

his trying duties with an exemplary patience, courage, and tact. His intimate and cordial relations with Lord Granville were an important factor in preserving harmony. It rested now with those at Geneva to ascertain if they by any possible means could come together and avert disaster. Already Mr. Davis had suggested to Mr. Adams that the Tribunal should pass upon the indirect claims in advance of the other claims. To this proposal Mr. Adams had replied that the same idea had occurred to him. The difficulty, as the reader can readily understand, was that the British Government denied the right of the Tribunal at all to entertain the question of the indirect claims, even though it was sure to decide against making them a foundation for damages.

Even at the darkest moment the Agent of the United States did not lose heart. On the contrary, he stood firm in upholding the right of his Government to have the validity of these claims passed upon by the Arbitrators. We see him immediately upon the adjournment of the conference writing to Mr. Fish as follows: —

"I have myself suggested to Mr. Adams that if the Arbitrators are satisfied of the justice of our position on the question of jurisdiction, they should, in view of the position of our Government, take the bull by the horns, and pass upon the indirect claims themselves, in advance of the other claims.

"He told me that he had no doubt himself that the indirect claims were within the scope of the Treaty; and that

he had thought of the same way of cutting the knot, and letting the Arbitration go on. It would be a way most unpalatable to England, but if there is pluck enough in the Tribunal, it might be done. I have not much faith that it will be.

"The Arbitrators are at present on the other track, and are trying to secure the assent of England to their consideration of the subjects which are admitted to be within their jurisdiction." [1]

The afternoon of Saturday and the better part of the next day were taken up with long and busy conferences between Agent and Counsel, as well as an interview with Mr. Adams at his villa. A diary kept by Bancroft Davis (now in the archives of the Department of State) preserves a detailed account of the successive steps whereby at last the parties succeeded in reaching a ground upon which they could stand. The gravity of the perils involved, the strain upon our representatives charged with the duty of moving with wisdom, caution, and supreme tact, and the happy issue at last crowning their loyal efforts — all combine to render the story of this procedure one of the most interesting, as it always will be one of the most important, in the annals of American diplomacy. These considerations warrant a reproduction here of the entire memorandum.[2]

[1] MS. Letter, Davis to Fish, 15 June, 1872, *Archives, Department of State*.

[2] Mr. Davis has told concisely, yet with a masterly touch, the story of this critical stage in the life of the Treaty (*Mr. Fish and the*

"June 15, 1872. At the Conference, at the Hôtel de Ville, Mr. Adams again called my attention to his desire that I should see Lord Tenterden, and obtain his consent that the Tribunal should proceed with the examination of the general questions affecting the liability of England for the direct damages, leaving the disputed matters to be arranged between the two Governments. I replied that I did not suppose that the British Government would consent to have the Arbitrators go on with the British Argument unfiled; or, that they could sustain themselves in Parliament, if they attempted it. I suggested, however, that if he desired anything said to the other side on this subject, it should be done through Mr. Evarts and Sir Roundell Palmer. He assented and spoke to Mr. Evarts.[1]

"Baron d'Itajubá next spoke to me on the same subject, and expressed the same wish. I told him that we would interpose no objection, but that there was no probability that the English would consent to do so. The Baron expressed great regret, and said that the course

*Alabama Claims*, pp. 98–103), drawing freely upon the pages of this diary. It is eminently proper (as I have said above) that the entire text should be printed here. For the privilege of making a copy of papers on file at the Department of State, I have to thank Mr. Secretary Root; nor should I forget to acknowledge the very obliging character of the attentions shown me by the head of the Bureau of Archives, Dr. John R. Buck.

[1] Fitzmaurice, in his *Life of Granville* (1905), prints a letter from Granville to Bright, to be kept secret, saying that the Arbitrators "will on Wednesday declare *extrajudicially*" that the indirect claims cannot be entertained by them. To this the date of June 12, 1872, is assigned. The "12" is evidently a misprint — probably for "17" (vol. ii, p. 98). The statement by the author on page 99 that "the American agents (sic) then formally withdrew the indirect claims from the cognizance of the Tribunal," has no foundation in fact.

things were taking was going to put the Arbitrators to great personal inconvenience. I said that I could appreciate that, and would be glad to help them, if I could, but the difficulty was none of our making; and I added that I could see but one way out of it; which was for the Arbitrators to take up the indirect claims at once, and pass upon them while the motion to adjourn was pending.

"In the course of the afternoon I saw Mr. Adams again. He asked me if I had seen Lord Tenterden about assent to the taking up of the direct claims. I replied that I had not, because I supposed that Mr. Evarts was to have charge of that negotiation. He said he hoped I would see Lord Tenterden on the subject.

"Accordingly, I went to the Hôtel des Bergues, in the evening, and found Lord Tenterden at home.

"I told him at once what Mr. Adams had said to me, and I added that Baron d'Itajubá had expressed the same wish. I said that I came to him at the request of Mr. Adams, and not officially; that my Government had no preferences to express in the matter, but that personally I could not disregard the strongly expressed wishes of the American and the Brazilian Arbitrator. He said that he was only a conduit to carry the instructions from his Government, and that he had none on this subject.

"He added: 'I may as well tell you frankly that my instructions are positive, and limited — to secure the adjournment we have asked for, or to retire; and Sir Roundell Palmer has been sent with me, to advise me on every step.' [1]

[1] Sir Roundell had expected to return immediately to England — and he expressed disappointment at not being able to do so. *Memorials*, vol. I, p. 238.

"I replied that I had nothing to do with his instructions, and did not desire to know them until it should become necessary to do so; that at present all I wanted to know was his individual opinion upon Mr. Adams's proposition. He replied: 'I will tell you frankly that I do not believe that it would be entertained by the Ministry.' 'What does Mr. Adams want?' he asked. I said: 'He wants to secure to these Arbitrators the opportunity of doing what they are sent here to do.' 'If he means business,' he replied, 'he must go further than he has yet gone.' 'What do you mean by going further?' I asked. He replied: 'I mean that he must have the indirect claims rejected by the Arbitrators, if they are (as I understand them to be) of the opinion that they should be rejected.'

"A conversation ensued, in which I ascertained that he thought it probable that the neutral Arbitrators would be willing to say that Great Britain could not be held responsible for the indirect claims, and he thought that the manifestation of such an opinion would probably induce the United States to instruct their Agent to say that they did not desire to have these claims further considered by the Tribunal. He added that there was a strong feeling in England that the United States expected that the Arbitrators would, while rejecting these classes of claims specifically, let them have weight when considering the other classes, and they would desire some instructions to answer that objection, however unreasonable.

"When I was fully possessed of his idea I saw Mr. Waite and Mr. Evarts (Mr. Cushing had by this time retired), and told them what had taken place."

The reader may estimate for himself what a piece

of good fortune it was that both countries were represented by men as Agents who had learned to put trust in each other. As we have already seen, Mr. Davis upon meeting Lord Tenterden at Washington, soon came to regard him as a man in whom implicit confidence could be reposed, while on the other hand Tenterden both liked and trusted Bancroft Davis.

The Agent of the United States continues: —

"I had scarcely gone to bed when I was aroused by a knocking, and found Lord Tenterden at the door. He said that as soon as I had left he had seen Sir Roundell Palmer, and had told him what had taken place. He said that Sir Roundell had stated three points which would have to be borne in mind, if any such step as had been suggested by Lord Tenterden should be taken. He said that he had taken these points down in writing, and that although he could not give me a copy of them, I could take one in pencil from his dictation, if I pleased. I did so. They read as follows: —

"1. That the Arbitrators cannot give any judgment on the indirect claims, as not being submitted to them by both parties; and that, therefore, any expression of opinion upon them, at the present time, would be simply extrajudicial.

"2. That the British Government having expressly refused to allow the indirect claims to be adjudicated upon by the Tribunal, it would not be consistent with the duty of the British Arbitrator to take any part, directly or indirectly, in any expression of opinion on the subject.

"3. That any expression of opinion on the subject

would not be binding upon either of the two Governments, unless assented to by both.

"When I had read them I said that there were several matters in them that would require notice from us, if they were to be regarded as communicated from him to me. He said they were not to be so regarded; that they were the views of Sir Roundell Palmer, communicated to him for his information, and that he had taken them down in pencil, in order that he might make sure of what he was going to tell me for Mr. Adams's information."

This procedure must be set down as having been a good day's work. There was displayed a strong disposition on Lord Tenterden's part to arrive at an agreement, if possible. The British Government are simply refusing to allow the Arbitrators to say whether the "indirect claims" were within the submission of the Treaty; but now at last they do go far enough to admit that if the Arbitrators should express an opinion, it would be extrajudicial. Lo! a rift. Suppose they *do* announce an extrajudicial opinion — what then? We shall see.

Early on the morning of Sunday, 16 June, Mr. Davis met the Counsel, and submitted to their consideration the three points that Sir Roundell Palmer's ingenuity had raised. He accompanied the submission with comment as to each point, as follows: —

"1. It is conceded that any expression of opinion upon these claims by the Tribunal, at the present stage of the Arbitration, will be extrajudicial. The Treaty provides

for only one judgment by the Tribunal regarding damages to be rendered for a sum in gross, after all previous questions named in the Treaty shall be determined. But these claims are regarded as now properly before the Tribunal by the agreement of both parties; and it is believed to be the duty and the right of the Tribunal to pass upon them, unless they shall be withdrawn by the United States.

"2. As this point refers only to the course which the British Arbitrator may take, it calls for no remark.

"3. Each Government will be at liberty, after an expression of opinion by the Tribunal, to take such course as it deems consistent with its duty to itself and to the other party."

The Counsel returned this paper to Mr. Davis, and expressed their concurrence in the views presented. Mr. Davis continues: —

"It was thought best, however, that Mr. Evarts should see Sir Roundell Palmer, and call his attention to the fact that his third point contains everything necessary for the protection of either Government; and suggest whether the points on which the Governments must necessarily disagree, had not better be regarded as not having been said. He did see him, later in the evening, and Sir Roundell is understood to concur in the opinion that the third point is all which he now desires to stand.

"As soon as the Counsel had completed their examination of Sir Roundell's points and my remarks, Mr. Evarts and I went with them to Mr. Adams. I communicated to Mr. Adams in full what had taken place between Lord Tenterden and myself. I stated to him that I believed

this to be the only way of saving the Treaty, — that, in my judgment, a long adjournment would end in its rupture, — that, even if it should not so end, it would be very inconvenient for the members of the Tribunal, who were now here and ready to go on with their work, to come back at the end of several months; and that I felt that it was a duty to them, as well as to ourselves, to spare no effort which could honorably be made, to have the Arbitration go on.

"Mr. Adams replied that he agreed that an adjournment as asked for would end in a rupture, and that he was willing to do all in his power to prevent it. He said that he had had some conversation with Mr. Fish, before leaving Washington, in which Mr. Fish had told him that he was willing to have the indirect claims decided adversely, and that he had said to Mr. Fish that in his judgment they ought to be so disposed of — that Mr. Fish had felt so much interest in the matter that he had sent a special message to him in Boston, by Mr. Boutwell, to see Sir Alexander Cockburn, in London, and endeavor to arrange some way to have it done; that he had seen some influential persons in London on the subject, but had not seen Sir Alexander, because he did not think him the best person to see for that purpose; that he had also seen General Schenck, and that General Schenck, who was then endeavoring to arrange the matter upon the basis of an interchange of notes, had handed him a paper containing the substance of a declaration, which at that time it was thought might be desired from the Arbitrators when they should assemble.

"Mr. Adams read a portion of this draft; from which Mr. Evarts and I gathered the opinion that it might be

construed to imply a doubt of the jurisdiction of the Tribunal over the indirect claims; and we so stated to Mr. Adams. He said at once that he had no doubt himself on that point, that he thought them clearly within their jurisdiction. Mr. Evarts, however, called his attention to some points in the Argument of the Counsel bearing upon this, and laying the foundation for the contemplated action of the Tribunal. It was then understood by us that Mr. Adams was to see Count Sclopis, and to ascertain whether the proposed action would probably be taken."

In the afternoon, it seems, Mr. Adams called and handed to Mr. Davis a paper which set out the differences at issue, and that in the opinion of the Arbitrators it was inadvisable to adjourn.

Mr. Davis continues by saying that this paper states that it was

"needless for the Arbitrators to do more than declare that they *have consulted together and are of opinion that this Tribunal under* [must decline to assume any jurisdiction over a question which is not fully recognized by both parties as legitimately within the powers conferred upon them by the terms of the Treaty. But if any other reason were wanting to determine this point, the Arbitrators will not refrain from expressing their opinion that, if such claims as have been herein described were to be pressed and insisted upon by the Government of the United States as constituting under the public law good foundation for an award of compensation in money to be made, this Tribunal would have been constrained in deference to] what it holds to be the recognized rules of international law applicable to such cases *should it exer-*

*cise jurisdiction will be bound* to decide that Great Britain could not in their opinion be made responsible in damages therefor.

"Although greatly disappointed in this paper," continues Mr. Davis, "I expressed no opinion about it to Mr. Adams, but simply said that I would carry it before the Counsel and see him again about it. I did at once place it in General Cushing's hands with pencil notes indicating amendments which I thought absolutely essential. The principal amendments were the exclusion of the passage indicating purpose not to assume jurisdiction and making the expression of opinion only indicative of what they would do should they proceed to consider it. The pencil marks are indicated on this paper also in red ink.[1] They are not, however, all that I desired to make, — only all that I had time to indicate. I further said that I would suggest that, in any new draft, the Counsel should try to preserve as far as possible the form which Mr. Adams had adopted, so as to limit the discussions with him to the fewest possible subjects, — but that, as the draft stood,

[1] It will be perceived that our Agent proposed to insert the words italicized, and to strike out all of the text included between the brackets. Mr. Davis sought to obtain from the Tribunal a determination to the effect that an application of the recognized rules of international law would at once dispose of the indirect claims.

The Archives of the Department of State, it may well enough be added, contain a confidential letter from Mr. Davis to Secretary Fish, 22 May, 1872, setting forth at length the history of the indirect claims, and making plain the reasons why they had been put forward in the case. Our Agent took this step, he explains, that a connected statement of the facts might go upon the record, in justification of his action. "It would have been," he concludes, "a cause for grave censure, if these claims had not been presented as they were."

it could not be accepted by us, and would end in breaking up the Arbitration. All the Counsel agreed with me.

"Soon after Mr. Adams had left, Lord Tenterden came in. I told him that the Counsel would insist upon some notice being taken of the objectionable language in Sir Roundell Palmer's note, unless it was modified, and that Mr. Evarts was to see Sir Roundell this afternoon, on the subject. Tenterden said that he thought that would be the best way — that he did not want anything to do with the matter personally, as it was entirely out of the range of his instructions.

"June 17th. At an early hour, this morning, General Cushing informed me that the Counsel had agreed upon a paper to be proposed to Mr. Adams, as a substitute for the one he had handed me yesterday. It is as follows: —

"'The attention of the Arbitrators has been called to the fact of a difference of opinion between the parties presenting themselves before them in regard to the construction of the terms of the Treaty under which they have been constituted a Tribunal in their application to one particular point in the contention.

"'The existence of this difference of opinion, and the hope that negotiations now pending between the two Governments for the solution of this difficulty, may, if further time were given for that purpose, result in such solution, — have been made the basis of a request on the part of Her Majesty's Government to the Tribunal to adjourn the meetings of the Tribunal for a period of eight months.

"'It appears to the Arbitrators to be unadvisable for many reasons to accede to so long a period of adjournment; and, without passing upon the application to that

end, on the part of Her Britannic Majesty, it has seemed to them probable that a declaration which they, upon due consultation, are prepared to make respecting the subject of difference between the parties which forms the occasion for the request of adjournment, may remove the necessity for the pending application.

"'The Arbitrators are of the opinion that such claims as those for the National losses stated in the Case, presented on the part of the Government of the United States, to have been sustained by the loss in the transfer of the American commercial marine to the British flag; the enhanced payment of insurance; the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion, do not constitute in the public law good foundation for an award of compensation in money; and this Tribunal would be constrained, in deference to what it holds should be the recognized rules of international law applicable to such cases, to decide that Great Britain would not in the opinion of the Arbitrators be made responsible in damages therefor.

"'The Tribunal does not assume to declare this opinion as a present exercise of jurisdiction over the subject of these claims, the possession of such jurisdiction by this Tribunal under the terms of the Treaty being the matter in difference between the two Governments, which has been brought to the notice of the Arbitrators, and concerning which they now offer no opinion; nor does the Tribunal in declaring this opinion assume that it possesses under the terms of the Treaty the jurisdiction to make a definitive disposition in advance of its award of this separate question, were its jurisdiction over it not the subject of

contention between the parties. The Arbitrators have, however, thought it their duty to lay before the parties this expression of the views they have formed upon the question of public law involved, and to which their final award must be expected to adhere.'

"With this paper Mr. Evarts and I drove out to see Mr. Adams. Mr. Evarts read it to him, and explained to him the changes from his draft, and why they had been made. We had to wait a few minutes before being able to do so, as Mr. Staempfli was with Mr. Adams when we arrived.

"Mr. Adams heard what Mr. Evarts had to say (I took but little part in the conversation except to acquiesce in what was said by Mr. Evarts) and said that, so far as he could judge from hearing it read, he could substantially adopt the paper. He said that both Baron d'Itajubá and Mr. Staempfli were much disturbed by the attitude of affairs, and he thought that they would be disposed to join in the declaration. He proposed to go to Count Sclopis before the meeting of the Tribunal, at two.

"In about two hours Mr. Adams came to me to say that he had seen Count Sclopis, and had laid the paper before him, and that the Count assented to it. He said that he (Mr. Adams) had been obliged to make some changes in it to make it conform to his own views. [I asked him what the changes were. He said that they were mostly unimportant. One was important. The statement in the draft submitted to him was that according to principles that *should* be recognized as public law. He had altered this, as he believed that the principles are now recognized. I told him that I was very sorry that he felt it his duty to do so. I may add that I think that he was not under the necessity of making a change which will be construed by

the British adversely to his country, and which I certainly do not agree to, and which others of much greater authority than I would also dissent from.]

"Soon after this we went into the fourth Conference of the Tribunal. The Protocol of the previous Conference was read in form, as it had been agreed to by Lord Tenterden and me, adding to it the words: 'The Tribunal decided that the Protocols should be signed by the President and Secretary of the Tribunal, and by the Agents of the two Governments.'[1]

"Count Sclopis then turned to me and said: '*Vous aves le parole, Monsieur.*' I replied, '*Messieurs, Je n'ai pas encore reçu de mon Gouvernement des instructions positives touchant la demande de Lord Tenterden pour un ajournement du Tribunal. Je suggère que le Tribunal s'ajourne encore jusqu'à mercredi, le 19 Juin.*' Lord Tenterden, to whom Count Sclopis then turned, said: '*Je ne puis faire aucune objection,*' and the order for adjournment to Wednesday was at once made.

"I returned at once to the hotel, after first preparing the Protocol for this meeting, and sent to Mr. Fish the following telegram, which had been previously prepared by me, and amended and approved by the Counsel: —

"'Conference adjourned to Wednesday. Arbitrators will probably, in advance of time indicated in Treaty, express their opinion that claims for increased insurance, transfer of marine, and prolongation of war, do not constitute in public law good foundation for an award of compensation in money. Should that be done Counsel

[1] It will be noted that the Agent of the United States signs the Protocols first, our Government having been the first named in the Treaty.

will advise me in writing that after such an intimation of opinion, the United States cannot ask the Tribunal further to consider these claims in making its award. It is expected that on this footing the regular course of the Tribunal, without adjournment, may be maintained. I agree in the policy and propriety of such a course, and shall telegraph more fully asking for instructions.'

"June 18, 9 A. M. Just as I was about to send this paper, I learned that at the Conference yesterday the Arbitrators unanimously agreed in principle upon the disposition to be made of the three classes of indirect claims." [1]

The Arbitrators arrived at their conclusion on Monday. Sir Roundell Palmer on Tuesday, 18th, handed in a counter-draft that differed but little from the wording proffered by the United States — so that the Arbitrators readily agreed upon the form of what they proposed to announce. Lord Selborne has this to say as to the action taken at this period by the British representatives: —

"During the pause afforded by these adjournments, Sir Alexander Cockburn told me that the idea of getting rid of the difficulty by a spontaneous declaration of the Arbitrators against the indirect claims had been suggested by Mr. Adams, and that the rest of the Arbitrators were inclined to entertain it; and he desired me to consider in what form it could be done, so as to leave the position assumed by our Government untouched, without shutting the door against its acceptance on the other side. Accordingly I drew up a form of declaration, which I thought might be accepted on both sides, unless the

[1] *MS. Archives, Department of State.*

United States preferred the failure of the Treaty to the abandonment of those claims; and this being communicated by Sir Alexander Cockburn to the other Arbitrators, was adopted by them." [1]

On Wednesday, the 19th, Count Sclopis, on behalf of all the Arbitrators, made a statement, based on the application of Lord Tenterden for an adjournment. It avoided expressing an opinion upon the point as to the interpretation of the Treaty about which the two Governments were in difference, and proceeded to give a reason why it would not be useful to allow an adjournment. It announced that the Arbitrators individually and collectively had arrived at the conclusion that the "indirect claims" did not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide thereon.

The text of this announcement is so well worth consulting by those who have followed up the narrative of this controversy, that it has been thought well to print it entire. It will be found in Appendix III, *post*.

It will be remembered that the British party at

[1] *Memorials*, vol. I, pp. 236-237.

Geneva caused it to be made known that this extra-judicial announcement of the Tribunal would not be considered as binding upon the two Governments, unless both should express their consent. The Agent of the United States (under the advice of Counsel and the instruction of Secretary Fish) agreed that such should be the effect. Mr. Fish in his cablegram to Mr. Davis, 22 June, 1872, conveying the direction of President Grant that he accept the declaration of the Tribunal, says: —

"This is the attainment of an end which this Government had in view in the putting forth of those claims. We had no desire for a pecuniary award, but desired an expression by the Tribunal as to the liability of a neutral for claims of that character." [1]

The Secretary had ever kept in mind how important it was for the United States, who were likely to be neutrals in time of war, to have this troublesome question settled by the expression of an opinion, and by the affirmative action of a Tribunal, of weight and dignity, that would authoritatively fix the character of similar claims for the future.

At the next meeting of the Tribunal, on 25th June, therefore, Mr. Davis stated that the declaration so made was "accepted by the President of the United States as determinative of their judgment upon the important question of public law involved."

Then follows this significant language: —

"The Agent of the United States is authorized to say

[1] *Gen. Arb.*, vol. ii, p. 579.

that, consequently, the above-mentioned claims will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made." [1]

The Conference was adjourned to Thursday, the 27th. The step to be taken by the British Government was awaited with not a little concern, for until Great Britain went upon the record as likewise accepting the declaration of the Tribunal, and did so in terms diplomatically agreeable to the United States, the danger had not been entirely passed.

Now, after the lapse of so many years, a bit of secret history may without harm be revealed. We perhaps shall gain an insight into some of the perils that attend a procedure where the attempt is made to bring to an end a difference between two great nations — a difference that had woefully inflamed public feeling, and had threatened the breaking of a solemn Treaty, even to the point of war.

On the day (Wednesday, 26th) before the Tribunal was to convene, the Agent for the United States had received from the Agent for Great Britain a copy of the note which the latter proposed to lay

[1] *Gen. Arb.*, vol. iv, p. 21. *The Nation* had pilloried the Agent of the United States, and belabored him at a great rate for his folly in having included the "indirect claims" in the Case. The next week, after the last one of these attacks, however, this newspaper, with unconscious humor, enlightened its readers by saying: "We believe it to be trustworthy [information] that it was Caleb Cushing, and not Mr. Bancroft Davis, who put in the indirect claims, and that he did it to gratify Mr. Sumner." *The Nation*, New York, 8 August, 1872.

before the Tribunal on the following day, as the answer of the British Government to the statement made on the 25th by Mr. Davis. As soon as he could get the Counsel together, Mr. Davis laid before them Lord Tenterden's answer, and called their attention to the words "relinquishment made pursuant to their suggestion." From now on, I quote Mr. Davis: —

"I told them I thought this required some action on our part. They agreed with me, and after consultation advised that I should see Lord Tenterden and try to get the words out. If that could not be done, then we should take decided note of it, when the paper should be put in. I sent word to Lord Tenterden that I wanted to see him as soon as he should be up, and received for answer that he would be ready in a half-hour. I was punctual to the appointment, and was received by Sir Alexander Cockburn, with whom I had a few minutes' talk. When Tenterden came in, he left us.

"I told Lord Tenterden that I would go at once to business: that we had found these objectionable words in the paper sent us; that while I could not assume to criticise the language of a communication of the British Government, I would say to him as a friend, equally desirous with himself of bringing these negotiations to a successful result, that such language was highly objectionable to the United States; and if left in when he presented the paper to the Tribunal, would call for decided notice on our part.

"He wanted to know what would be said. I said that the language had not yet been settled, but the substance would be: —

"1st. That the United States had not relinquished the claims.

"2d. That they had done nothing at the suggestion of the Arbitrators. That so far from this being true, we had refused to accept Sir Roundell Palmer's draft of the declaration of the Arbitrators because it contained these two objectionable ideas almost in the very language in which they now reappeared, and Sir Roundell had consented to take our substitution, without which the negotiations would have been stranded at that stage.

"He replied that the fact that there had been a discussion as to the language, at a previous stage of the negotiations, did not affect the present question; that the language as now used was recitative, and used by the British Government, and purported to show their understanding of the act of the United States, and did not assume to relate to the acts or opinions of the Tribunal; and that he was unable to change it, as he had no instructions permitting him to do so.

"I said that whether in the mouth of the British Government, or of the Tribunal, the language was equally objectionable when put upon the record of the Tribunal, for it assumed to state as facts, things which were not facts, and which had once been effectually disposed of by Mr. Evarts and Sir Roundell Palmer. I said that I could not, of course, presume to ask him to take any particular steps regarding his instructions from his Government, but I would say in frankness that, if that statement went in, I should have to make a counter-statement which would tend to drive us apart, and I would suggest whether he could not telegraph and get discretionary instructions regarding it.

"He asked me what I objected to, — if it were not true that we relinquished the claims.

"I answered that my statement to the Arbitrators showed exactly what we had done, and that I had not used the word 'relinquished,' and did not intend to have it put in my mouth; neither had I said that we had done anything at the suggestion of the Tribunal.

"He said, I understand you object to the statement that the relinquishment is made at the suggestion of the Arbitrators.

"I replied, I object to the statement as a whole, and I object to each of its parts. What is your objection? he asked. I have several, I replied, some of which I have endeavored to explain. One, however, which I have not stated is sufficient and all-controlling. I have never had instructions authorizing me to make any such statement as your Government is putting into my mouth. I shall not ask for such instructions, and they would be refused, if I did ask. If you are without authority to withdraw the objectionable words, you will exercise your own judgment about telegraphing your Government for such. I have warned you in advance of the course which I shall have to take.

"He asked me to wait a few minutes while he consulted with Sir Roundell Palmer, and requested me before he left to indicate what changes I would desire. I told him that I would be satisfied if he would take out the objectionable words, and substitute for them the word statement; that I had no objection to the Arbitrators making the proposed declaration upon my statement.

"He left and in about ten minutes returned, saying

that Sir Roundell authorized him to assent to the change. It was accordingly made." [1]

One sees quickly enough what importance attached to this timely and firm intervention by the American Agent. Had the words remained as Lord Tenterden had at first proposed, and had no objection appeared of record from the United States, the British Government would have been able to say that their contention was upheld by the confession of the Government of the United States, namely, that they had never agreed to submit the indirect claims to the determination of the Tribunal, and that their opponents had relinquished those claims at the instance of the Arbitrators. So far from this being the truth, the Government of the United States, as a matter of fact, maintained that the record states that, the Tribunal having declared that they had reached the conclusion that the claims in question were not a good foundation for damages, they (the Government of the United States) would not further insist upon them. That is to say, practically, the Tribunal has given its opinion in advance, and there is no longer any use in our insisting upon a money award for these claims.

The statement made by Lord Tenterden, on the 27th, is as follows: —

"The undersigned, Agent of Her Britannic Majesty, is authorized by Her Majesty's Government to state that

[1] *MS. Archives, Department of State.*

Her Majesty's Government find in the communication [1] on the part of the Arbitrators, recorded in the Protocol of their proceedings of the 19th instant, nothing to which they cannot assent, consistently with the view of the interpretation and effect of the Treaty of Washington hitherto maintained by them; and being informed of the statement made on the 25th instant by the Agent of the United States, that the several claims particularly mentioned in that statement will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made; and assuming that the Arbitrators will, upon such statement, think fit now to declare that the said several claims are, and from henceforth will be, wholly excluded from their consideration, and will embody such declaration in their Protocol of this day's proceedings; they have instructed the undersigned, upon this being done, to request leave to withdraw the application made by him to the Tribunal on the 15th instant for such an adjournment as might enable a supplementary convention to be concluded and ratified between the high contracting parties: and to request leave to deliver the printed Argument now in the hands of the undersigned, which has been prepared on the part of Her Britannic Majesty's Government under the fifth article of the Treaty with reference to the other claims, to the consideration of which by the Tribunal no exception has been taken on the part of Her Majesty's Government." [2]

[1] "Communication." Note that the United States term it "declaration." After this had all been settled some one in referring to it spoke to Count Sclopis of the judgment of the Tribunal on the indirect claims. The President quickly replied: "Pas jugement, pas jugement — déclaration."

[2] *Gen. Arb.*, vol. iv, pp. 21–22.

There are a good many words here; enough to remind an old lawyer of some of those stretches on the pages of "Chitty's Pleadings." Had the statement been of the present day, the comfortable reform in England with respect to prolixity of pleadings very likely would have been here reflected. As if to clinch matters, Count Sclopis, in behalf of all the Arbitrators, then formally declared that the several claims for indirect losses "are and from henceforth shall be wholly excluded, etc." Thus the indirect claims, after having caused almost no end of trouble in the two families, were buried decently, and forever, in the international cemetery.

Lord Tenterden, as soon as he perceived that all danger was over, filed the British Argument, and Count Sclopis, removing the seal of silence from what had been done, proceeded to read an interesting and appropriate address.

"It has been said that the triumph of an useful idea is never anything but a question of time. Let us congratulate ourselves, gentlemen, that we assist at the realization of a design which must be productive of the happiest results. Let us hope that it will realize in the future all that it promises to-day. . . ."

The following is a copy of a telegram to Mr. Fish that is historic: —

GENEVA, June 27, 1872.

British Argument filed. Arbitration goes on.

DAVIS.[1]

[1] *Gen. Arb.*, vol. ii, p. 580. Of this laconic despatch Charles Hale, then Assistant Secretary of State, wrote: "It reminded me of General

The President and the Secretary of State, so it happened, were at Boston, that afternoon, in attendance upon the Peace Jubilee — a great musical demonstration of praise and thanksgiving for the restoration of the Union. It is related that when Mr. Fish had glanced at the telegram, he handed it to General Grant, who for a moment stood silent — the tears moistening his eyes — such was Nature's relief after days of intense anxiety. To Mr. Fish the news came in a shape to make him exceedingly happy. He saw that his prudent and firm statesmanship was to carry through to success a work for his country, and for the peace of the world, that meant the best kind of a personal triumph. The Treaty of Washington had been preserved intact and the principle of Arbitration between nations now seemed destined to bring to mankind its blessings for the years to come.

"I doubt whether Americans, except in Government circles, know how near we were to a tremendous conflict. [The writer (General Badeau, Consul-General of the United States in England), a close observer, lived in London during the period of the clamor and excitement of which we have been taking note.] The feeling in England was very high. At times it was positively offensive to Americans, especially official ones. More than once at clubs and dinners I had to resent remarks that no good American could listen to in silence, and yet, I, too, in my sphere was bound to be courteous and reserved." [1]

Putnam's 'P. S. He is hanged.'" MS. Letter to Davis, 28 June, 1872.

[1] *Grant in Peace: A Personal Memoir* (1887), p. 228.

In the United States, the news that the "indirect claims" trouble had been got over was received and commented upon quite as a matter of course. Not so in England. As we have seen, the entire population had been stirred up. National prejudice had been at work in full force; and the news from Geneva excited a profound attention, hardly less so than if it had been bulletins posted up from a field of battle where their country's troops were engaged. The assurance that a settlement of the dispute had been effected, and that danger no longer threatened, brought a sense of grateful relief to all parts of the kingdom.

"It was one of the great moments of history. The Cabinet were sitting in London in something like permanent session on that fateful day" (15th), says Granville's biographer.[1] Forster in his diary tells the story of how anxious hours were passing while news from Geneva was awaited. When a telegram came on Sunday that Mr. Adams was moving, "we sent a short helpful telegram. . . . Granville drove me off in high glee, calling at the Foreign Office to see Harcourt. After all, this Treaty, which has as many lives as a cat, will live."[2] "You appear to have saved the coach in the act of upsetting."[3] Gladstone was with Granville on the anxious 15th, at the

[1] *Life of Earl Granville*, vol. ii, p. 99.

[2] Reid: *Life of Forster*, vol. ii, p. 31.

[3] Granville to Tenterden, 30 July, 1872, *Life of Earl Granville*, vol. ii, p. 100.

Foreign Office where before midnight they got that day's Protocol from Geneva. "Thank God," exclaims the Premier, "that up to a certain point the indications on this great controversy are decidedly favourable." [1] Granville writes a handsome letter, cordially thanking Selborne for the part taken by him in the settlement "of this vexed question in a manner which is so satisfactory in every respect." [2]

Lord John Russell, who had seen nothing whatever good in the Treaty, was not pleased. His biographer, writing twelve years later, says of the Arbitrators, that they "actually . . . decided the very point which Queen, Cabinet, Foreign Office, and the great majority of the whole nation had decided should not come before them for decision." [3]

[1] Morley: *Life of Gladstone*, vol. ii, p. 411.

[2] *Memorials*, vol. i, p. 239.

[3] Walpole: *Life of Lord John Russell*, vol. ii, p. 366.

## CHAPTER VIII

### THE TRIAL

THE "Argument," which the British Agent had been holding in reserve until the indirect claims should be got out of the way, turned out to be, when filed on 27th June, a document not very formidable as to length.

It assumed to be little more than a summary of the points previously advanced in the British Case and Counter-Case. It presented no new line of reasoning. A report annexed from the Board of Trade criticised the figures of the amount of losses offered by the United States. There was a map of the coast off Liverpool; and sundry statements of the Counter-Case of the United States were briefly controverted.

It looked suspiciously as if the Counsel for Great Britain had been taken by surprise. For months the opinion had prevailed throughout England that Arbitration would never take place. The Chief Justice had made up his mind that the Treaty was dead, "as he for many months had been loudly telling all London that it ought to be." [1] As early as the 18th of January a rumor, to be treated as gossip, had reached the ears of the Agent of the United States, to the effect that Chief Justice Cockburn had recom-

[1] Morley's *Life of Gladstone*, vol. ii, p. 412.

mended Mr. Gladstone to withdraw from the Arbitration if any claim for indirect damages should be insisted upon.[1] Sir Roundell Palmer, as we have seen, was disappointed that his duties at Geneva had not been abruptly ended. The "Argument" bore marks of having been hastily prepared. At all events, it lacked the tone of a final and concluding answer. It apparently took it for granted that the Tribunal would call for another argument to be of a character more exhaustive. The document termed itself a "Summary." It certainly fell far short of that logically reasoned reply which the Counsel for the United States had reason to expect.

Nor did this circumstance excite surprise. When it became evident that the proceedings would go forward, the British Government saw itself confronted with the necessity of seeking an opportunity to prepare and submit further argument of a more elaborate character, than that which they were just offering. Sir Roundell Palmer, confident that the step would amount to nothing more than a mere matter between Counsel, addressed a letter (19 June, 1872) to Mr. Evarts suggesting how it would be well to proceed.

". . . As your Counter-Case was little more than formal, our 'Argument' is necessarily little more than a summary of our previous Case and Counter-Case; while yours is (as it naturally would be) an elaborate Argu-

[1] MS. Letter of John Jay (Minister to Austria) to Davis, *Archives, Department of State.*

ment, like the opening speech of the plaintiff's counsel, embodying, among other things, a well-considered reply to our Counter-Case.

"Under these circumstances, it is probable that we shall be disposed to request the Arbitrators to give us the opportunity of putting in an answer to your Argument, with the understanding that you may (in that case) put in a rejoinder, so having the last word; and, as the Arbitrators could not understand spoken arguments in our language, I think that further argument had better be in writing.

"For that purpose I shall like to ask for myself time till the end of the first week in August, when a copy of my final argument should be sent to you, and also (unless you have reason to think that this should be done later), to each Arbitrator. Then, if you should desire it, I shall suggest that you might have, for your final rejoinder, till the end of August, and that the Tribunal should assemble here again, for their final business, at the beginning of September."

In plain English the Counsel for Great Britain was saying that he had found himself not satisfied with the Argument that he had filed. He proposed that the case be argued all over again. This was an adroit move. Of course, the proposal could not for a moment be entertained. After consultation the Agent of the United States and the Counsel agreed that Mr. Evarts should decline the proposal as inadmissible under the terms of the Treaty, and as being inconvenient and unjust to the American Counsel.

Mr. Evarts so wrote; and then he, with Mr. Waite, left Geneva for a day or two in Paris.

The English party, after the declaration of the 19th, thought it well to take a brief rest. They went to Chamouni, having first arranged a cipher by which they could be brought back. The weather was sultry and the "interval of recreation just then was welcome." [1]

Mr. Davis, in the absence of Mr. Evarts, had a further conversation with General Cushing about Sir Roundell Palmer's extraordinary letter.

"Mr. Adams had previously told me that Sir Alexander Cockburn had said something in the private conference of the Arbitrators about arguments by Sir Roundell Palmer and Mr. Evarts, but Mr. Adams spoke of it as said in the flourishing way in which the Chief Justice sometimes likes to disport himself, and did not appear to attach importance to it." [2]

The upshot of the affair was that, at the request of Mr. Davis, a memorandum was drawn up by Mr. Cushing and translated into French, giving the reasons why no further argument of the nature contemplated by the Counsel for Great Britain should be permitted. This paper was put into the hands of Mr. Adams.[3]

At the conference on the 26th of June Lord Ten-

[1] *Memorials*, vol. I, p. 238.

[2] MS. Letter, Davis to Fish, *Archives, Department of State.*

[3] *Ibid.* "The Arbitrators are all anxious to get to work, and will not receive with much patience any efforts to further postponement."

terden undertook to have the Tribunal act favorably upon a statement prepared by Sir Roundell Palmer, embodying these proposals of his for a delay in order to admit of further argument. The Arbitrators promptly disposed of the application. They followed the suggestion of Mr. Adams, that it was not for Agents or Counsel to make requests of this nature; that the Arbitrators themselves could require argument by Counsel, if they should desire further elucidation upon any point.

A second attempt to reopen the Argument was made on the 28th — this time by the Arbitrator from Great Britain, who proposed to require argument on a series of eight points, which he named, "for further elucidation." The other Arbitrators were of the opinion that these points had been elucidated quite as much as was needful; and Sir Alexander stood alone in voting for his motion.[1] It was a good deal to ask that the Arbitrators should suspend work for ten weeks, and that the American Arbitrator, Agent, and Counsel should be kept that much longer abroad.

"It would have given to the British Counsel," says Mr. Cushing, "*nearly six weeks* at his own home in London, with books, assistants, translators, and printing-offices at his command, — in a word, the whole force of the British Government at his back, in which to write and print his Argument; while it would have afforded to the American Counsel *less than four weeks* for the same

[1] MS. Letter, Davis to Fish, *Archives, Department of State.*

task, in which to prepare and print our Argument, in both languages, with no libraries at hand, no translators, no printers, thrown wholly on our personal resources away from home in the heart of Europe." [1]

Of this scheme Mr. Davis quietly observes: —

"The Arbitrators evidently mean to keep the control of the proceedings in their own hands and not to be dependent upon the convenience of Sir Roundell Palmer." [2]

"What the Arbitrators did," said Sir Roundell Palmer, "was to refuse to allow the whole Case between the two Governments, or any part of it, except certain special questions, limited and defined by themselves, to be argued before them at all. I had not, therefore, the opportunity (except on some points, in a sort of strait-waistcoat) of saying, in reply to the general views of the American Argument, what I should have thought proper, and in the way in which I should have wished to do so." [3]

As soon as the Chief Justice realized that the Arbitration would proceed, he set to work with characteristic energy and persistence. He allowed himself no relaxation from labor. His private secretary found the position no sinecure. Sir Thomas Sanderson, writing to me, under date 26 February, 1907, says of the English party: —

"We ordinarily all dined together, and were a very cheery party, though I think every one of us was ill from the heat and severe work, at one stage or other of these

[1] *The Treaty of Washington*, pp. 102–103.

[2] MS. Letter, Davis to Fish, *Archives, Department of State.*

[3] *Memorials*, vol. i, p. 276, Palmer to Lowe, 7 October, 1872.

proceedings. I was particularly struck at the resolution, almost amounting to heroism, with which Sir Roundell Palmer continued his work, while suffering severely from an attack of gout in both knees.

" Sir A. Cockburn was excellent company. He had no time to study the voluminous papers, on account of his work as Lord Chief Justice, and shut himself up for the purpose immediately after his arrival at Geneva, rarely coming out of his room except for meals, or for a little exercise. I do not think he gave us much additional work on this account, though he would occasionally appeal to have all the papers relating to some particular subject marked for him. But he was a very rapid and voluminous writer, and the work of copying out his various pronouncements, having them translated into French, and then reproduced in sufficient numbers at an approaching sitting, was at times extremely severe."

The Chief Justice carried his habit of exacting study to such lengths that he paid no attention whatever to the social requirements of his position. He did not appear, save on a single occasion later to be mentioned, at any of the numerous dinners or other festivities, where the Americans met and fraternized with the other members of the English party. As a result he was personally but slightly known to us young Americans, though we should greatly have enjoyed meeting him occasionally. Cockburn, we thought, wore an absorbed look, as if there were something on his mind; while Sir Roundell exhibited serenity — had much the appearance of a bishop

— a countenance pure and benignant, almost seraphic. Tenterden, who was not at all of a striking appearance, reminded one of a plain man of business. Staempfli was never seen in society. On the other hand, Count Sclopis, though advanced in years, seemed heartily to enjoy social intercourse, and was in no wise lacking in gallantry. One evening, after a dinner given at the Beau Rivage by Bancroft Davis, there was a brilliant ball. No one appeared to be having a better time than the portly and amiable President of the Tribunal; for though he left the dancing to the younger people he took a delight in looking on. "*Les demoiselles Américaines, qu'elles sont belles!*" he said to me, his face bright with the spirit of the occasion. I quite agreed with him. I ought to have said, "What fine judges you Italians are" — but I did n't. I could say it now, but *l'esprit d'escalier* is ever unhappily late.

The finest-looking man of them all in evening dress was Mr. Cushing. He was punctilious in meeting every social duty, and at a dinner no man could make himself more agreeable. His old-fashioned courtesy to ladies was delightful to witness. Though not an after-dinner wit *par excellence*, as was Mr. Evarts, Mr. Cushing never failed to respond to the demands of the occasion. When the Countess Sclopis said: "Mr. Cushing, you speak of 'flirtation.' — Pray what does that mean?" "Well, madame, I should say it meant at-tention, without in-tention."

Mr. Evarts was as charming at the table as it is possible to conceive that a cultivated, quick-witted person of note can be. He was at home in the art of raillery. He enjoyed the fun himself, and the smile that played around his lips before letting fall a sparkling rejoinder only heightened the company's enjoyment. For instance, my diary of Saturday, 27 July, reads: —

"Dine at the American Arbitrator's. Mr. Adams said to me that Seward once told him that Thurlow Weed was an extraordinary man. 'Why, he has made the Governors of New York on both sides for years.' Mr. Adams said that, as for himself, he held political managers in contempt.

"Mr. Evarts is delightfully witty. He told an inimitable story of Smith, a wealthy man, who owned prize cattle; that he was chased out of a field by a bull. 'The idea of a man as rich as I am — to be chased by a bull.' Also, that one of his daughters, when very young, said, of a donkey that he had sent up to his farm (at Windsor, Vermont), and which she for the first time had heard bray, 'I think he is homesick; but he won't be so homesick when father comes.' Mr. Evarts said that this was a compliment to the effect that he was good company. Evarts speaks of the '*Alabama* patois.'"

The social duties and pleasures that marked our sojourn at Geneva played a useful part in the accomplishment of the purposes for which we were spending our time. We were not unmindful of the fact that the United States aimed not only to settle

the *Alabama* Claims by gaining an award, with the proceeds of which to make a pecuniary reparation to those who had suffered losses, but what was of greater moment, to sow the seeds of a new and lasting friendship with England. There would be no better place in which to begin this work than Geneva. The amenities of personal intercourse would not fail to exert a wholesome influence; and while not conscious of a studied purpose to that end, every one of us felt impelled to multiply occasions for meeting personally the members of the English party, so that we could get to know each other fairly well, if not intimately. It came about in a natural way that we began to look upon the two parties as one family — trying to make up a family quarrel and to start anew.

Lady Laura Palmer and her daughter were greatly liked by the ladies of our party. Lady Tenterden was more retired, but always pleasing. It is grateful to quote from Lord Selborne what he has to say on the topic of his wife and daughters: —

"They were assiduous in their attentions to the wives and daughters of the Arbitrators, and of the members of the American party; so promoting very much that spirit of friendliness and cordiality which our Government had at heart. There was nobody else to do this; and the return of hospitalities also fell to our lot. It was thought desirable that a dinner should be given to the Arbitrators and their wives, and all the members of the American party, and a few other friends, Swiss and English, which

we undertook to do; the Chief Justice being one of our guests, though he was not inclined to add the labours of social entertainments to those of the Tribunal, not being in good humour with the proceedings, or with the actors in them, except the British party. The entertainment came off on the 5th of August, although I was crippled with gout at the time, and it was very successful. My wife's desire to be on the most agreeable terms possible with those into whose society she was thus thrown was appreciated on their part; and nothing could be more amicable than our private intercourse with them all." [1]

A favorite saying is accredited to Lord Stowell that " a dinner lubricates business." If our seniors in either party were mindful of their opportunities in this direction, we young Secretaries were not slow to follow their lead. We invited the English Secretaries, together with Mr. Itajubá, to a handsome dinner; and they returned it with one equally enjoyable. We daily met the young Englishmen at the swimming-baths, and elsewhere than at the conferences, so that before long all became well acquainted. Among the few places of entertainment that were visited, I recall an evening at the " Cirque d'Américaine," where I chanced to sit next to Christine Nillson and her husband. She had been, I think, only recently married, — perhaps was then on her bridal tour. She looked most charming. I could not fail to be struck with the frequency and heartiness with which Madame applauded a clever act by a

[1] *Memorials*, vol. I, p. 244.

performer. I wondered if she did not possess a professional, and, therefore, a keener, sense than the rest of the audience of how much a generous round of applause helps along the performance, and delights the actor with the thought that his efforts are appreciated.

A solid friendship sprang up between Sir Roundell Palmer and Mr. Evarts. As the latter was put forward by our Counsel as spokesman in more than one Conference with the Counsel for Great Britain, the two had been brought into contact after a manner which, as lawyers are well aware, is likely to beget respect and esteem. Then the home attractions that Mrs. Evarts and her daughters offered to the visitor were not lost upon Sir Roundell and his family. In his book Lord Selborne speaks of his new-made friend in terms almost of affection.

"In person, spare, in countenance refined and intellectual, in conversation sincere and candid, with a good deal of dry humour, he stood very high in the estimation of us all, and not least in my own. I could have trusted him implicitly in anything in which I had to deal with him alone. He was a good lawyer and a skilful advocate, and had also the qualities of a statesman; his manners were simple, and in his domestic relations he was very happy. Altogether he was a man of whom any country might be proud." [1]

When the newly made Lord Chancellor (who was a stanch Churchman) opened his new house at

[1] *Memorials*, vol. i, p. 247.

Blackmoor with a service of benediction, Mr. and Mrs. Evarts were present as guests, on their way home. They left there 10 October, after paying a visit; and Mr. Evarts wrote to Lord Selborne from Liverpool as follows: —

"I think that we may feel that our personal relations to each other have not been without benefit to the greatest interests of these two powerful nations; and I shall cherish the hope that in the future, we may have the power, as I am sure we shall feel the wish, to advance and confirm the good dispositions of our respective communities to a complete and perpetual unity, and to discourage and reduce all contrary tendencies. I shall always remember that I was in England when you were made Lord Chancellor, and in your house when your first fire was lighted in your great hall-chimney; and shall never feel that your public service, or domestic prosperity, are wholly foreign or distant to me." [1]

While these agreeable personal relations were forming there were no signs that the feeling of cordial dislike to Americans on the part of a large number of influential Englishmen had in any degree lessened. Nor could it be expected when such a journal as the *Saturday Review*, representing culture and scholarship, was denouncing "the scurrility of the American Case." An incident that occurred at Geneva in the latter part of June, shortly before it had been made public that the "indirect claims" trouble was at an end, illustrates how unreasonable

[1] *Memorials*, vol. i, p. 285.

and how intense was this feeling. General Sherman, accompanied by his son Tom, reached Geneva in June for a stay of a day or so. Mr. Davis presented him to the President of the Tribunal, who introduced the General to the other Arbitrators. Of course everybody was charmed with the simple manners of the great soldier. The General stayed at the Beau Rivage. The proprietor of the hotel honored the occasion by hanging out a very handsome American flag from one of the windows of the rooms occupied by his distinguished guest. Upon the afternoon of the day that the General had taken his departure, an English tourist applied at the Beau Rivage for quarters. The rooms just vacated were assigned to him, as specially commodious and attractive. A few minutes later the traveller bounced into the lower room of the hotel, loudly exclaiming that he had been insulted; he would not stay where such treatment was accorded him; such an indignity as to put him into a room displaying the American flag.

Now that the reader has learned that the daily intercourse of the parties did not lack for an exhibition of mutual personal esteem, and even for the growth in one or two instances of a genuine friendship, I feel confident that I shall not be misunderstood if I venture to allude to the displayof what, for lack of a better term, I may call the tone and temper of the "official" attitude of the Englishmen toward us of the "States." It was too conspicuous to escape notice. There was an air of superiority assumed by

the Englishmen, not only as respects Americans but toward the Italian, Swiss, and Brazilian representatives. Not enough of an air, I should say, to offend; but nevertheless a species of assumption that did show itself time and time again. The maxim of the common law that the King can do no wrong seemed to be a truth which had passed over into the proposition that the conduct of the English Government must as a matter of course be regarded by outsiders as immaculate. It was the height of temerity for a foreigner to question the action, much less the motive, of an English official. This, because the English way is the best possible way. A citizen of another country can only betray his ignorance when he thinks otherwise. This complacent article of faith lent to the Englishman himself an atmosphere of perfect content with what England had done, or had omitted to do. Firm in this belief, he found himself unable to conceal a pitying contempt for less enlightened persons who did not share the belief with him.

The underlying plea in behalf of England, in Case, Counter-Case, and Argument, was not that she *had not* been in fault, but that in the nature of things she *could not* have been so. This overwhelming confidence in their own rectitude, and absolute certainty of their own advance — in everything that makes a nation great — over every other power of the globe, found expression in the contest waged at Geneva in much that was said by the Englishmen, and in their manner of saying it.

In opposing from the beginning the principle of England's submitting the *Alabama* claims to arbitration, Lord John Russell showed himself to be a consistent exponent of this phase of the British national character. The Lord Chief Justice, though acting as an Arbitrator, could not rid himself of a disposition to extol his own country and to disparage the men of other nationalities. He writes to Granville: —

"Things have gone badly with us here. I saw from our first sitting in July that they would. We could not have had a worse man than Staempfli — or next to him than the President. The first a furious Republican, hating monarchical government, and ministries in which men of rank take part, ignorant as a horse, and obstinate as a mule. The second vapid, and all anxiety to give a decision which shall produce an effect in the world, and to make speeches about 'civilisation,' 'humanity,' etc., etc., in short *un vrai phrasier*. Baron Itajubá is of a far better stamp, but not sufficiently informed and very indolent; and apt by reason of the latter defect to catch hold of some salient point without going to the bottom of things, with the further defect of clinging to an opinion once formed with extreme tenacity." [1]

In like tone, though with a larger measure of self-restraint, Lord Tenterden complains: "As a personal question, we have found the neutral arbitrators to be very commonplace people." Tenterden

[1] Cockburn to Granville, 25 August, 1872; Fitzmaurice: *Life of Earl Granville*, vol. ii, p. 101.

rises above this prejudice when in the same letter he says: —

"It may prove to have been a good thing for both countries and for the world in general to have had recourse to a tribunal, the members of which derived their views from a source so widely differing from the one which we have been accustomed to revere as the only fountain of knowledge." [1]

That Sir Roundell Palmer was not free from occasionally exhibiting the presence of this feeling is a fact that I find to be impressed on my memory. Proof of its influence crops out in the chapters of the "Memorials" that deal with the Treaty of Washington. He says of the Lord Chief Justice, as if the foundation for the consciousness were not open to the slightest doubt, that he was "conscious of intellectual superiority" to his colleagues; "and at no pains to conceal what he felt." [2] "Sir Alexander Cockburn is in fact the only one of the Arbitrators who can be considered as bringing to his task the fully developed experience of a judicial as well as juridical mind." He cites Lord Westbury, who "in his letter of 7th January, 1872, to Lord Granville had truly observed, that a tribunal so constituted was 'little likely to observe the well-known rules of arbitration or course of judicial proceedings.'"

While the air of the assumption referred to cannot

[1] Tenterden to Granville, 8 September, 1872; Fitzmaurice: *Life of Earl Granville*, p. 105.

[2] *Memorials*, vol. i, p. 247.

be said to have been that of superciliousness, it closely approached it. There was a calm taking for granted that, excellent and admirable as the individual American might be, it was quite impossible that he should occupy a social plane equal to that of the favored classes of England. Not that there was open manifestation of this article of faith on the part of our British friends to an extent that can be said in the least to have passed the limits of good breeding. Far from it. But it appeared to be a conviction which regulated their behavior, and its influence constituted a part of the unwritten record of what was going on in Geneva. The Americans, as I now recall it, paid no attention whatever to its existence, regarding it as an amiable national weakness.

The topic is a delicate one. I may have failed to convey a distinct idea of what I have in mind. But there is no doubt that an atmosphere of some such feeling as that which I have attempted to describe existed at Geneva. Perhaps, on the other hand, we from the "States" were as a body open to comment for something in *our* bearing which struck our opponents as a national characteristic that might well have been improved upon. To come to individual instances, I dare say that the American Arbitrator had never suspected that Tenterden would write home: "Adams always tries to pump me"; and it may have surprised the American Agent when, years afterwards, he could read: "Davis is very morose and discontented in appearance. I think he is

disgusted with the rejection of the pursuit and capture claims." [1]

But to return to our narrative. The Arbitrators welcomed the prospect of getting promptly to work, though circumstances had rendered it advisable to take a short recess; so they adjourned until Monday, the 15th of July. Mr. Waite improved the opportunity to set out upon a tour through Switzerland, with his family and a few friends, and he was kind enough to include me among the number. Each day was delightfully passed. I had already seen much of Mr. Waite at Paris, where he had endeared himself to the younger members of our party. A better chance now offered to know the real man. Frank, pure-minded, ever consulting the comfort of others, he was the most lovable of companions. In those few, happy vacation days, I learned — as so many of his countrymen were destined before long to learn — how elevated and how generous were his qualities of mind and heart.

Upon reassembling on the 15th of July the President of the Tribunal announced that it was necessary for the Tribunal to determine the method and order of its procedure. Mr. Staempfli had outlined a plan which he now submitted. It provided that each vessel should be taken up, the facts with regard to her stated, and the rules of the Treaty applied to the facts. This simple and natural method appeared

[1] Tenterden to Granville, 8 Sept., 1872; Fitzmaurice: *Life of Granville*, vol. ii, p. 106.

to meet the favor of all the Arbitrators, save only Sir Alexander Cockburn. A discussion took place in the presence of Agents and Counsel. Sir Alexander urged his own plan with much warmth. He contended that the rational, logical, and most convenient course was to determine in advance the abstract principles of law; in fact, that it was necessary so to do. He again brought forward the statement that the points involved had not been sufficiently argued, and that the Arbitrators needed further light from Counsel. His colleagues seemed to be of opinion that they were ready to go ahead and take up the case of a vessel. They said that if they should find that their minds needed enlightenment upon the law, it would then be time enough to call upon Counsel.[1]

The Tribunal adjourned till the next day, leaving it undecided in what manner they would proceed, but plainly signifying that when the question should come to a vote the plan of the Swiss Arbitrator would be adopted. On the 16th Sir Alexander submitted a paper of considerable length to the consideration of the Tribunal, setting out the views just mentioned. Lord Selborne (who probably had something to do with drawing up the programme) observes in plaintive terms: —

" In vain did Sir Alexander Cockburn submit his pro-

[1] " It is impossible to convey to you the interest of the scene, especially when Mr. Staempfli made the declaration that his own mind was nearly made up on the questions at issue." MS. Letter, Davis to Fish, 15 July, 1872, *Archives, Department of State.*

posed plan. The other Arbitrators determined to follow a proposition of M. Staempfli that they should at once proceed to consider one after another the cases of the several ships inculpated." [1]

It is perhaps worth while to recite a part of the closing paragraph of Sir Alexander's paper, that we may observe with how much delicacy the thought that the Tribunal was not competent to proceed to decide the case upon the documents already in their hands is kept in the background. After stating several questions, ending with the enquiry "whether a Government acting in good faith, and honestly intending to fulfil the obligations of neutrality, is to be held liable by reason of mistake, error in judgment, accidental delay, or even negligence of a subordinate officer," Sir Alexander gravely remarks: —

"Looking to the difficulty of these questions, and the conflict of opinion which has arisen among distinguished jurists on the present contest, as well as to their vast importance in the decision of the Tribunal on the matters in dispute, it is the duty, as it must be presumed to be the wish, of the Arbitrators, in the interest of justice, to obtain all the assistance in their power to enable them to arrive at a just and correct conclusion." [2]

No one felt disposed to dispute the truth of this proposition. There was not the slightest danger that the Arbitrators would forbear to ask assistance, whenever they should find that they really needed

[1] *Memorials*, vol. i, p. 257. [2] *Gen. Arb.*, vol. iv, p. 28.

it. The Treaty had provided for an Argument to be delivered to each Arbitrator, and if the Arbitrators (that is, a majority of them) should desire further elucidation with regard to any particular point, they could require an argument, printed or oral. This meant, of course, not a reargument of all the law, but a fresh discussion of one or more points to be specified.

Sir Alexander's paper continues: —

"That they ought, therefore, to call for the assistance of the eminent Counsel who are in attendance on the Tribunal to assist them with their reasoning and learning, so that arguments scattered over a mass of documents may be presented in a concentrated and appreciable form, and the Tribunal may thus have the advantage of all the light which can be thrown on so intricate and difficult a matter, and that its proceedings may hereafter appear to the world to have been characterized by the patience, the deliberation, and anxious desire for information on all the points involved in its decision, without which it is impossible that justice can be duly or satisfactorily done." [1]

Mr. Cushing in his book criticises this paper without mercy. After pointing out that "arguments" are not, and cannot be, scattered over a mass of documents," he says that "the proposition betrays singular confusion of mind on the part of a *nisi prius* lawyer and judge." The move he accounts for upon the theory that Sir Alexander had neglected to read

[1] *Gen. Arb.*, vol. iv, p. 28.

the Arguments. "Instead of doing it, he had got bewildered by plunging unpreparedly into the 'mass of documents' filed by the two Governments." [1]

The proposal of the Arbitrator from Great Britain was discussed; and the Tribunal decided to take up the *Florida* at the next meeting, according to the Staempfli programme. Each Arbitrator was to express an opinion in writing, which would be provisional only. The opinion could be modified before a final decision. These provisional opinions, though read in the presence of Agents and Counsel, were to be kept secret. The plan seems to have been wisely conceived. It did not, however, please the British Arbitrator or the British Counsel. Yet there is no good reason for believing that the decision went against Great Britain, in any instance, because Sir Roundell Palmer was deprived of a chance to persuade the Tribunal to the contrary. True, the method followed was a distinct departure from the course usually pursued in an English or American court, but the Tribunal was not bound to follow the practice of such a court.[2] It shaped its procedure to suit itself, with a view of doing that which best promised to lead with proper celerity to a just and fair conclusion.

[1] *The Treaty of Washington*, pp. 112–113.

[2] It may be remarked here that while no lawyer elevated to the Bench in England, or in the United States, takes his seat without first having been sworn, according to the form of a judicial oath, for the faithful performance of his duties, the members of the Geneva Tribunal of Arbitration took no oath.

On the 17th the Arbitrators took up the case of the *Florida*. Mr. Staempfli was the first to express an opinion which found Great Britain wanting in due diligence. Sir Alexander Cockburn acquitted Great Britain, in an opinion read on the 17th and 19th.[1]

On the 22d Mr. Adams and Baron Itajubá agreed in their opinions with the result reached by the Swiss Arbitrator. Count Sclopis followed, and announced his provisional opinion to a like effect. When Count Sclopis had finished, for an instant there was perfect silence. Every one seemed to realize that, the *Florida* disposed of, the *Alabama* must inevitably follow; and that the principles laid down would probably carry the *Shenandoah*, and perhaps the *Georgia* and other vessels. The silence was broken by Sir Alexander Cockburn, who said: —

"At the end of his eloquent speech the President has spoken of the law of nations as the basis of his judgment.

[1] Of the conduct of Sir Alexander at the Conference of Wednesday, 17th July, the American Agent was moved to write confidentially to the Secretary of State, on the 18th, as follows: —

"In this rapid sketch of what took place at the Conference, yesterday, I cannot hope to give you even a faint idea of the excited, angry manner of the British Ambassador. He flushed in the face, and the tears welled in his eyes, as he denounced the charges against the British Government as false and unworthy of a great nation. This was not in the manuscript from which he was reading. When he abandoned his notes, and extemporized, which he did at length, he threw himself about, and pounded his desk, until he upset the stationery of Count Sclopis, who was sitting eight or ten feet from him." MS. Letter, Davis to Fish, *Archives, Department of State.*

Baron Itajubá, on the other hand, has spoken of the Three Rules as the foundation for his opinion. When I prepared my opinion, I thought that we were to occupy ourselves exclusively with facts, leaving the law to be discussed hereafter. From the beginning I have opposed Mr. Staempfli's mode of proceeding, and I have strenuously endeavored to induce the Arbitrators to discuss and settle the principles of law before determining the facts."[1]

The Chief Justice, with not a little show of temper, continued in this strain, saying, "I appeal to your sense of justice," with further remarks of like tenor.

The language and the bearing alike of Sir Alexander upon this occasion gave offence to his associates. He talked, it seems, like a person with a grievance. He said that the course pursued of referring only to the printed documents ought not to satisfy the Tribunal, and would not satisfy the public. Great Britain, he warmly insisted, had had no opportunity to reply to many considerations and arguments not appearing in any other document than the Argument of the United States. Although the Case had been for more than six months in their hands, and the Counter-Case for three months, the Lord Chief Justice had the temerity to argue that his fellow Arbitrators were not able to reach a correct judgment unless Counsel should be further heard. "There are men here not educated in the law, who are now examining questions about the

[1] MS. Letter, Davis to Fish, 22 July, 1872, *Archives, Department of State.*

great laws common to nations, for the first time; it is impossible that they should not be benefited by the help of Counsel." This extraordinary declaration he followed up by demanding, as of right under the Treaty, the aid of Counsel. It was a threatening situation.

The President (Count Sclopis) was profoundly moved. He rebuked the British Arbitrator in dignified but severe terms. Referring to his (Sclopis) having presided for twenty years over a court of justice, he said that never before had such language been used to him. He had already made up his mind upon the question of "due diligence," and had written his opinion. But he would consult the Tribunal.[1]

The Lord Chief Justice saw instantly that he had made a serious mistake. He hastened to disclaim an intention of giving offence. But he had arrayed the whole Bench against him. Each Arbitrator in turn declared that he did not care to hear argument. Mr. Adams added that it was not for one of the Arbitrators "to give us a lecture in this matter." They had the Case well in hand, and wanted no further elucidation — and yet they yielded, and were willing to hear Sir Roundell Palmer talk. The Agent of the United States later contrived to let the Tribunal know that the United States were content to rest upon the printed Arguments; and yet, if Great Britain should say that she desired an opportunity for her own benefit to argue certain specified points,

[1] MS. Letter, Davis to Fish, *Archives, Department of State.*

there would be no objection. The importunity of Sir Alexander Cockburn carried the day.[1]

At the next conference (25 July) the Tribunal, on motion of Baron d'Itajubá, announced that it would hear argument on the question of "due diligence generally considered"; also, upon the special questions of (1) the effect of commissions on Confederate ships entering British ports; (2) supplies of coal in British ports to Confederate ships.

The Brazilian Arbitrator had felt no need of having his mind enlightened. Nor did any member of the Tribunal, other than Sir Alexander Cockburn, deem further argument desirable. The Tribunal,

[1] Davis to Fish, 22 July, 1872, *MS. Archives, Dept. of State.* "'What is the matter with your Arbitrator?' was the warning note which came from Geneva, and from a friendly pen, very shortly after the sittings had commenced for actual business. 'He acts as if he were possessed. Last week he insulted the rest of us, one at a time, but to-day he insulted us all in a bunch. Does he yet mean to break up the Treaty?' 'The effect thus far is very damaging to our cause,' Lord Tenterden plainly told Lord Granville. (Tenterden to Granville, 1 August, 1872.) Sir Alexander Cockburn, in a word, considered the American claims excessive, and that their advocacy had been unscrupulous. He looked upon the conduct of M. Staempfli as unjudicial and bearing marks of partiality and prejudice. He considered most of his colleagues incompetent; and these feelings he was also entirely unable to conceal." (*Life of Earl Granville*, vol. ii, p. 102.) "I am not surprised at the violence of Sir Alexander Cockburn. I was prepared to expect such a display of pig-headed prejudice and temper from the conversation I had with him here, last winter. How much he must be helping us, unconsciously to himself, by such displays of anger and such insolent flings at his colleagues." (MS. Letter, Schenck to Davis, 24 July, 1872.)

however, concluded that it was better to listen to what Sir Roundell Palmer might have to say than to incur the risk, after judgment had been pronounced, of having Great Britain complain that a fair hearing had not been accorded her.

Four days after the announcement of a willingness to hear further argument, Lord Tenterden laid a printed brief before the Tribunal, in which Sir Roundell Palmer had elaborately discussed these questions. It is a fair inference that this supplemental argument comprises what the ingenious Counsel had previously been trying to get before the Arbitrators. The variety of topics which Sir Roundell manages to touch upon in his treatment of the subject of "due diligence" supports this theory. Pretty much the entire defence is brought forward under the head of "due diligence generally considered." "Very *generally*, it is clear," observes Mr. Cushing, to whom the duty fell of replying to the British "Supplemental Argument" on this point.[1]

We may profitably look a little into the groundwork of this last strenuous effort on the part of England's leader at the Bar, so as to conjecture, if we may, what possible reasons might be conceived of as being likely to have the effect upon the Tribunal of acquitting Great Britain of default in her duty toward the United States.

Briefly, it had been charged against England that she did not use due diligence to prevent the fitting-

[1] *The Treaty of Washington*, 123.

out, arming, or equipping within her jurisdiction of every vessel which she had *reasonable ground to believe was intended* to cruise or carry on war against the United States.

Also, that she did not use due diligence to prevent the departure from her jurisdiction of every vessel intended to cruise, etc., such vessel having been specially adapted, in whole or in part, within her jurisdiction, to warlike use.

That she permitted the Confederates to make use of her ports and waters as a base of naval operations against the United States; or for the renewal or augmentation of military supplies or arms, or the recruitment of men, for the purpose of war against the United States.

Lastly, that England did not exercise due diligence to prevent violation of her obligations and duties, as aforesaid, against the United States.

Our contention was, in a word, that the British Government could have prevented (and therefore *should* have prevented) the Confederate cruisers from getting to sea; that they gave hospitality to these cruisers; and in one instance (the *Shenandoah* at Melbourne) allowed the Confederate crew to be augmented by enlistments in a British port. We further said that the British Foreign Enlistment Act was punitive, not preventive; and that even the law of that Act was not enforced as it ought to have been enforced.

Great Britain replied that she *had* exercised due

diligence; that her legislation was sufficient to protect the rights of a belligerent as against another belligerent, and that the law was duly administered. If evidence had not been adduced sufficient to satisfy the officers of the Government that the ship complained of was violating the law, the Government was not to blame for failure to detain her; and lastly, that, on the facts, England was not responsible.

The main defence (as we have heretofore seen) was that a due execution of the Foreign Enlistment Act measured the obligations of the British Government toward the United States. Even in the case of the *Alabama*, flagrant as were the undisputed facts, Great Britain contended that the charge, when tested, became reduced to a complaint that for a few days, while "the evidence was coming in, the British Government took a little more time to satisfy itself that there was ground sufficient to warrant a seizure than the United States think was necessary." [1]

The Three Rules of the Treaty and the meaning of the expression "due diligence" were discussed in the British Argument. Of course there had been ample time for just as extensive an argument upon this particular point of "diligence" as Counsel could reasonably have desired. The enquiry whether the prospect that Arbitration would fail had the effect to slacken the interest with which the British Gov-

[1] *Gen. Arb.*, vol. iii, p. 280.

ernment prepared their Argument, opens a field of speculation into which we may not enter. It is noteworthy that while the American Argument extends to two hundred pages, the British Argument occupies only ninety-one. But taking the Case and the Counter-Case into the computation, it will appear that the total number of pages which present what the United States chose to say on the subject is three hundred and thirty-nine; while Great Britain employed four hundred and thirteen. Thus we see that, before asking leave to file a supplementary argument, Great Britain had already "had her day in court" in a larger number of words than the United States had found it necessary to use.[1]

The Counsel for Great Britain was most anxious to be heard anew. He urged as reasons why he should be permitted to reargue the case, that the Counsel for the United States had advanced new arguments that were erroneous and calculated to mislead unless Great Britain had a chance to correct them; also, that many important views taken in the Argument of the United States could not have been adequately dealt with by anticipation; and, finally, that there was in the Argument a new and copious use made of extracts from Phillimore, and from the speeches and writings of British statesmen, to many of which no reference had before been made.[2] His importunity, as has already been observed, was at last rewarded; and the Tribunal was

[1] *Gen. Arb.*, vol. iii, p. 379. [2] *Ibid.*, p. 375.

probably not surprised to find that Sir Roundell's supplemental argument upon the topic of "due diligence" by no means confined itself to the scope indicated by these ingenious "reasons." It took up the assigned subject in a general way, and discussed it very much in the same strain as the British Argument had already done.

To understand the Three Rules, says the Counsel for Great Britain, it is important to see how the question between the two Governments would have stood had there been no agreement in the Treaty as to the Rules. Why this should be so is not very apparent, and under his skilful treatment the Three Rules, before Sir Roundell gets through, practically disappear. The earlier Argument had maintained that an unarmed ship was as much a lawful subject of commerce with a belligerent as any other munition or instrument of war. A ship leaving the neutral country unarmed, it was contended, is guilty of no violation of neutral territory.[1] In the presence of the Three Rules it would appear hardly worth while to consider what on this point was the doctrine of international law.[2]

[1] *Gen. Arb.*, vol. iii, p. 386.

[2] The Arbitrators, with the exception of Sir Alexander Cockburn, evidently paid no attention to the question whether the Three Rules did, or did not, merely formulate principles of international law in existence during the period of the occurrence of the events giving rise to the *Alabama* Claims. It was enough that the parties had agreed that these Rules should govern the Tribunal, as well as "such principles of international law, not inconsistent therewith," as it should determine to have been applicable to the

But Sir Roundell Palmer proceeds to discover new virtues in the British statute of neutrality. Of the Foreign Enlistment Act of 1819, he says: —

case. Sir Alexander found room in his dissenting opinion to express views upon the subject. He sees in the consent of Great Britain to the Three Rules "a great and generous concession." *Gen. Arb.*, vol. iv, p. 232.

No charge of bringing this irrelevant enquiry into the discussion is to be laid at the door of Great Britain. The Case of the United States, with some emphasis, lays down the proposition that neutral obligations were not in the least changed by adopting the Three Rules. It proceeds to sustain the contention by citing instances of British practice, and by adding numerous extracts from writers upon public law.

Of course, the British Counter-Case had to say something by way of reply, "since the Government of the United States has thought proper to enter into the question at some length." (*Gen. Arb.*, vol. ii, p. 216.) It accordingly declares that the doctrine of the Three Rules goes "beyond any definition of neutral duty which up to that time had been established by the law or general practice of nations." (*Ibid.*) It relegates the subject to a note (*Ibid.*, p. 395) which extends through several pages of citations from writings upon public law, among them an article in the *American Law Review*, of January, 1871 (a long quotation), which article Sir Alexander likewise cites, terming it "learned and able." (*Gen. Arb.*, vol. iv, p. 252.) The article, which fully merits the praise it elicited, is entitled "Contraband of War." The author was John Torrey Morse, Junior (Harvard, 1860), of the Boston Bar. Mr. Morse, some years ago, furnished the profession with two works of the first rank, one on "Arbitration and Award," the other, on "Banks and Banking." He has likewise achieved success as a biographer. "The American Statesmen Series," under his editorship, has given to literature a most valuable survey of the political development of the United States; and Mr. Morse's contributions thereto have been of the best, notably his "Abraham Lincoln."

The writer of that article aptly remarks: "It was not because

"This law . . . was regarded by Her Britannic Majesty's advisers not only as prohibiting all such expeditions and armaments, augmentation of the force of armaments, and recruitments of men, as, according to the general law of nations, would be contrary to the duties of a neutral State, but also as forbidding the fitting-out or equipping, or the special adaptation, either in whole or in part, to warlike use, within British jurisdiction, of any vessel intended to carry on war against a power with which Great Britain might be at peace, although such

the Messrs. Laird sold a warship to the Confederates that we have a claim against England for a breach of international law. But it was because collateral arrangements for completing the equipment and armament of the ship so sold, by placing on board officers and crew, guns and provisions, rendered the entire procedure, in fact, the inception of a hostile undertaking from the confines of a neutral country." *Gen. Arb.*, vol. ii, p. 403.

It is not surprising, therefore, that the British Counsel, in casting about for an argument, should touch upon the right of a neutral citizen to sell a ship to a belligerent, even if that argument were to little purpose. The various observations upon this head, contained in the record, though foreign to the issue, may prove to be not without value to him who would study the development of this branch of the law of nations. There is no likelihood, however, that any other principles will prevail in the future, in the conduct of neutrals and belligerents, than those embodied in the Three Rules.

Little reason can exist for fearing the presence some day upon the ocean of a new *Alabama*. The time cannot be far off when private property (not contraband) belonging to a citizen of a belligerent power, will be safe from capture at sea, because of an international agreement to that effect. Nor is it too much to say that certain features of the old rules have become obsolete with the abandonment of wooden ships. The battleship or armored cruiser of to-day, with its powerful armament, furnishes conditions where the justice and the propriety of the Three Rules are all the more plainly apparent.

vessel might not receive, or be intended to receive, any armament within British jurisdiction; and although she might be built and sold by shipbuilders, in the ordinary course of their trade, to the order of a belligerent purchaser, so as not to offend against any known rule of international law." [1]

Such had not been the construction of the Act at the time these cruisers were allowed to escape. Captain Bullock (who represented the Southern Confederacy abroad, in the matter of obtaining ships-of-war) tells us that before he entered into negotiations for a contract to build, he took legal advice at Liverpool, so as to keep strictly within the law. He meant to violate no written law. Public sentiment at Liverpool was so strongly in favor of the South that he evidently had no fear of any "unwritten" law. Two eminent barristers, both of whom afterward filled the highest judicial positions, gave it as their opinion that the mere building of a ship within Her Majesty's dominions by any person (subject, or no subject) is no offence, whatever may be the intent of the parties, because the offence is not the *building*, but the *equipping*.[2]

The case of the *Alexandra* (1863) furnished an interpretation of the Act, to the effect that a vessel specially adapted for warlike use, but not armed, was *not* within the prohibition of the Foreign Enlistment Act.[3] Sir Roundell, a little further on in his

[1] *Gen. Arb.*, vol. iii, p. 388.

[2] *Secret Service of the Confederate States in Europe*, vol. i, p. 67.

[3] *Gen. Arb.*, vol. i, p. 105; vol. iii, p. 272.

supplementary argument, insists (as though it were material) that "international law never did require a neutral Government to prohibit and prevent the manufacture, sale, and despatch of unarmed ships-of-war, by its citizens within its territory, for a belligerent." [1]

But the stand thus taken in the supplementary argument that the Foreign Enlistment Act *did* prohibit the *building* of the *Alabama* — because she was "specially adapted" for carrying on hostilities — was a step forward from the position assumed in the British Argument, where it is said that its provisions were of doubtful construction; and where the plea was put forward that if the officials honestly understood those provisions in a less stringent sense, England ought not to be considered as having failed in her international duty.[2]

The British Arguments occupy time in attempting to prove how suitable and complete were the laws of the kingdom in providing means for the performance of England's duty as a neutral. Sir Roundell deals liberally in abstract propositions. He comes around at last, however, to what has already been pointed out as constituting the main ground of defence, namely, the proposition that Great Britain had provided an adequate law, and had honestly tried to execute that law. Hence, she could not be held liable. This idea dominates every argument.

"The Government of a civilized nation," impressively

[1] *Gen. Arb.*, vol. iii, p. 424. [2] *Ibid.*, p. 272.

remarks Sir Roundell, in this last supreme effort to prevent the Tribunal from going astray, "cannot be held wanting in due diligence if, having made reasonable provision by law for the prevention of illegal acts of this nature on the part of its citizens, it proceeds to deal with all such cases in a legal course, according to its accustomed methods of civil administration." [1]

If the Arbitrators were counting upon being enlightened by new reasons from the Counsel of Great Britain, they must have been disappointed. The lawyer who resorts to this supplementary argument, in the expectation of viewing a masterpiece of forensic skill and logical reasoning, constructed by a great leader of the English Bar, will likewise meet with disappointment. I have examined it with special care — some parts of it upon more than one occasion. Endeavoring to lay aside national prejudice, and yielding to that sense of fraternal sympathy which our profession has for the Counsel who, after having fought bravely, loses his case, I am compelled to admit that there is lacking in Sir Roundell's presentation that cogency and persuasiveness, that acuteness and appositeness — in fine, that weight of reasoning upon the exact point in issue, which one has the right to look for in the work of a great lawyer conducting a great cause.

The eminent Counsel himself afterwards complained that the questions upon which he had submitted his supplementary argument had been pre-

[1] *Gen. Arb.*, vol. iii, p. 422.

judged. Sir Roundell had a sore task to perform. He was virtually arguing for a new trial before a Court not favorably disposed thereto. Of these eleventh-hour efforts Lord Selborne remarks: —

" To my colleagues they gave satisfaction; and, on the other side, they were elaborately answered. But after what had passed in the previous consultations of the Tribunal, it was all lost labour; not Cicero or Demosthenes, Vattel or Wheaton, could under such circumstances have produced any effect. It is true, that upon all the Cases, the final and formal vote was not taken till afterwards; but the whole thing had practically been settled before." [1]

The argument submitted upon the two special questions calls for no extended mention. The effect of commissions to the commanding officers of the cruisers was the subject of an oral argument, in reply, by Mr. Evarts. The delivery of this speech occupied the time of the Conferences on the 5th and 6th of August, and formed a pleasing feature in the record of its procedure. Mr. Evarts displayed a remarkable power in holding the close attention of his hearers. This power was the more striking from the fact that the three " neutral " Arbitrators could hardly follow him, because of their slight knowledge of English. However, they looked wise, and sat mute, aware that in a day or two they would have it all laid before them in French.[2] The speaker's voice and

[1] *Memorials*, vol. I, p. 259.

[2] The secretaries, for two nights, worked hard until early morn-

manner were agreeable; and his delivery was that of an advocate fully convinced of the justness of his cause. He imitated to a slight extent his distinguished opponent by touching upon one or two topics other than that which had been specially assigned to him.

Sir Alexander Cockburn and Mr. Adams listened most attentively. The former made frequent interruptions. To every question Mr. Evarts returned an apt reply. He seemed to like to be questioned; and the interruptions were good-natured. The delivery of this oral argument was in all respects worthy of the high reputation of the distinguished leader of the New York Bar.

There was perhaps no special need of extending the argument beyond the single point of the effect of a commission, but the Tribunal were in a humor to listen, and Mr. Evarts's mind was full of the subject of the "*Alabama* Claims" in general. It was a genuine pleasure to be present, as I was, and to hear what seemed to be an "argument to the Bench." I retain an impression that a chief object in view was to reach and strengthen Mr. Adams, — particularly as to the *Georgia*; though I confess that I am unable

ing, in order to get the copy ready for the press, — a "due diligence" and a zeal that brought to each a grateful letter from Mr. Davis, who made special mention of their services, in a report, to Secretary Fish. The sheets were sent to Paris for translation and were there printed in French. Mr. John Davis took a copy to London; and in a surprisingly short time he returned with a pamphlet, printed in handsome style.

now to perceive how that could have been. It was a part of the gossip of the hour, let me add, that a majority of the Arbitrators had favored our winning the case of the *Georgia*,[1] though subsequently a unanimous decision was rendered against the United States, as to this cruiser.[2]

[1] Davis to Fish, *MS. Archives, Department of State.*

[2] The decision was a disappointment to Mr. Davis. In a confidential letter to Mr. Fish, he speaks of a concession made by Mr. Adams, at total variance with the facts, in Mr. Davis's judgment, and opposed to the views and the interests of the Government of the United States. The letter was written before the decision as to the *Georgia* had been announced. Later upon rendering his opinion in the case of that vessel Mr. Adams says: "In the case presented on the part of the United States it is urged that Her Majesty's Government might have gone so far as to seize the vessel within the French jurisdiction, and the case of the *Terceira* expedition is cited as a precedent. But it seems to me that the Government of the United States would scarcely be ready to concede the right of a foreign power to settle questions of justice within its jurisdiction without its knowledge or consent" (*Gen. Arb.*, vol. iv, pp. 192–193).

Of this statement Mr. Davis writes to Secretary Fish: "Neither Counsel nor Agent ever dreamed of such a position. We were surprised to find that Mr. Adams had made such a mistake, and that he should have felt it his duty to comment upon it" (*MS. Archives, Department of State*).

It is proper to add that the American Arbitrator had no warmer admirer than Mr. Bancroft Davis.

In his final report to Mr. Fish, speaking of the toleration of insurgent operations in England, and of English feeling against the United States, Mr. Davis, after quoting from Count Sclopis and from Baron d'Itajubá, remarks: —

"It would seem from some of Mr. Adams's expressions that he did not concur in these views of his colleagues. While regretting that he did not do so, because the views seem to me to be in

A reply to Sir Roundell Palmer's argument, upon the special question as to the supply of coal in British ports to Confederate cruisers, was prepared and submitted by Mr. Waite. It is written clearly and concisely, in excellent tone and temper. "Thus the nation, whose authority and dignity had been so grossly offended in the construction and outfit of these vessels, was the first to grant them neutral hospitalities." [1] The brief keeps strictly to the point of supplying coal as in the nature of furnishing a base of operations. Such was the modesty of the junior member of the Counsel that he had entertained no thought of taking a part alone in these replies. It was only at the solicitation of the Agent of the United States that Mr. Waite came to acknowledge that duty required him thus to appear individually of record. His argument is a model of simple, direct reasoning.

The office fell to Mr. Cushing, as senior Counsel, to prepare a reply to the main contention of the supplementary argument of Great Britain. It is not too much to say that there was no American lawyer

accordance with the facts, and also in accordance with general principles which all maritime powers would desire to maintain, I must bear testimony to the perfect and dignified impartiality with which, not only in this respect, but throughout the proceedings, Mr. Adams maintained his position as a judge between the two contending nations. Of him, at least, it may be said that his love of country never controlled his sense of justice, and that at no time did he appear as an advocate." (Davis to Fish, 21 September, 1872, *Gen. Arb.*, vol. iv, p. 10.)

[1] *Gen. Arb.*, vol. iii, p. 518.

living who could surpass Mr. Cushing in fitness for this duty. In the field of public law, no less than in that of familiarity with diplomatic precedents, he stood almost without a rival. Though past threescore years and ten, his vigor of intellect and body continued unimpaired. Mr. Cushing's capacity for work was, as his secretary had frequent occasion to know, practically without limit. He therefore hailed with delight the opportunity now offered for a passage-at-arms with the famous leader of the English Bar.

That Mr. Cushing improved the opportunity to the utmost will be the verdict, I think, of every lawyer who turns to the Reply Argument of 6 August, 1872, and reads it, even only in part. Mr. Cushing dictated this argument to me in French, almost word for word as it now reads. It is a singularly able paper. It says just what ought to be said. There is not in it a superfluous sentence. The compactness of the reasoning, the rapidity of movement from one topic to another (a quality which adds to the force of a style in itself animated), and the tone of confidence displayed throughout, combine to render the reply a signal example of a triumph in forensic encounter. Next to the Case of the United States, this paper in my judgment reaches the distinction of being the clearest and ablest exposition of the subject-matter of the controversy that is to be found in the records of the Tribunal.

After having taken under consideration the case

of the *Shenandoah*, the Arbitrators expressed a wish to hear the point elucidated as to the enlistment of men at Melbourne. Sir Roundell Palmer prepared an argument.[1] He did not confine himself to the question of fact as to the number of men enlisted. He submitted his argument with some verbal observations. Of this argument Mr. Davis says it was "long, able, and at times eloquent."[2] When he had concluded, Mr. Cushing said to the Tribunal that the Counsel for the United States had drawn up a memorandum, and he submitted it with a few pertinent remarks. He closed with a request to be informed if the new questions raised by the Counsel for Great Britain remained open before the Tribunal. After deliberation, the Tribunal, by a vote of four to one, significantly declared that they had been sufficiently enlightened.[3]

Another request from the British Arbitrator for further elucidation concerned the entry of the *Florida* into Mobile (September, 1863), a port of the Confederate States, where she stayed for about four months, and where she shipped a crew. The depredations of the *Florida* were committed only after a second evasion of the blockading fleet off Mobile, by escaping from that port. The Tribunal adopted the proposal of Sir Alexander Cockburn. Sir Roundell

[1] "On very short notice, while I was suffering from gout." *Memorials*, vol. i, p. 259.

[2] Letter, Davis to Fish, *MS. Archives, Dept. of State.*

[3] *Gen. Arb.*, vol. iv, p. 35.

Palmer prepared an argument, of no great length. One of the English secretaries read it to the Tribunal on the 23d of August. It maintained that any responsibility that Great Britain may have been under came to an end when the *Florida* once was at home in a Confederate port. It was a novel point to raise. The Counsel for the United States did not take Sir Roundell's view. Their reply (which was brief), though signed by all three of the Counsel, was drawn up by Mr. Evarts, and by him read to the Tribunal.[1]

Besides the cases of the *Florida* and the *Alabama* the Tribunal found Great Britain responsible for all acts committed by the *Shenandoah* after her departure from Melbourne on the 18th day of February, 1865, because of an augmentation of force at that port. As to all the other vessels, there was no finding against Great Britain, except that tenders, such as the *Tuscaloosa* (tender to the *Alabama*), the *Clarence*, the *Tacony*, and the *Archer* (tenders to the *Florida*), being auxiliary vessels, were treated as following the lot of their principals, so that Great Britain was held to be responsible for their depredations.

[1] *Gen. Arb.*, vol. iii, pp. 546–549.

## CHAPTER IX

### THE DAMAGES

JOHN BULL, as the world has reason to know, is eminently practical. Whenever a situation begins to take on a look of touching his pocket, he can be depended upon to view with an extremely lively concern what is going forward. A French writer, who travelled through England in the early part of the last century, thus speaks of a trait he observed in Englishmen: "They love money so much that their first question in an enquiry concerning the character of any man is as to his degree of fortune." [1] Nearly fifty years later a shrewd yet kindly visitor accomplished a like journey, taking notes here and there; and when he returned home, he found it convenient to devote an entire chapter, "Wealth," to what he had to say in "English Traits" of this national characteristic.

It is well understood that the British taxpayer, in his day and generation, regularly presents himself as a personage with whom the British Government have seriously to deal. He insists on being told in advance for what ends the money is going to be used that he is called upon at stated periods to hand over to a tax-collector. He finds little joy in the

[1] *Fievée*, 1803.

ceremony of paying taxes; but he means to get at least the satisfaction out of it of seeing that, down to the very last penny, there is sufficient warrant for the expenditure; or, else, his grumbling will break the bounds of mere habit, and assume threatening proportions. The course taken by the Government is sure to be determined largely by a wholesome dread of the taxpayer. A bold act was it, therefore, in Mr. Gladstone to commit his country to the risk of being condemned at Geneva, to pay a bill of indemnity.[1] Taxpayers had to be reckoned with. They were bound to make a great ado about it. But Mr. Gladstone had the courage to take the step, and to-day the historian praises him therefor.

We may conceive that Great Britain sent to Geneva her Agent and her Counsel charged with the duty, — first, of satisfying the neutral Arbitrators that no responsibility whatever for the escape of the Confederate cruisers could be fastened upon the Government; and (in case the Arbitrators should prove to be obstinate in respect to England's alleged good behavior), secondly, of reducing the damages just as much as possible, even down to

[1] The *Annual Register* for 1872 (p. 89), speaking of the difficulties attending the reception in England of the "Three Rules" of the Treaty of Washington, says: "Although these difficulties were serious enough and tended greatly to increase the unpopularity of the entire arbitration scheme, not only with a large political party but with the public in general, another cause of dissension which very nearly led to the total failure of the negotiations was as yet undeveloped [the 'indirect claims']."

figures merely nominal. Her Counsel made a determined fight. The cause indeed could not have been argued better; but notwithstanding their specious reasoning, their earnest and emphatic protestations, they utterly failed in their endeavors. England was neglectful, said the Arbitrators. Now came the question, — and it was by no means an easy question, — What ought England to be adjudged to pay for her neglect?

So long as the argument of Counsel confined itself to a disquisition upon the law of nations, and a recital of what theretofore had been the practice of neutral Governments in time of war, the largeness of the topic lent dignity to the mode in which the hearing proceeded. A liability once established, however, and the controversy resolving itself into a procedure where one party is casting up column after column of figures, and the other discrediting them, there ensued a slight, yet visible, lowering of the standard of discussion. It was a turning from the studied harangue of the Senate Chamber to the bustle of the market-place. But the defenders of Great Britain were seen to be not a whit less doughty and alert in resisting the claims set forth in tables of figures, than they had been in denying the principles which affected to hold a neutral Government to a strict measure of international obligation. Indeed, the British Agent and Counsel, when decrying the amounts insisted upon by the United States, seemed to feel themselves planted on firmer ground than

that which they had occupied while contending for a broad construction of the law defining neutral duties.

It is to be noted that, while the subject of damages is discussed at considerable length in the Arguments of both parties, neither the Case nor the Argument of the United States names a specific sum as a total estimate of damages. Indeed, the Case admits the impossibility of presenting a detailed statement (1) of damages to persons growing out of the destruction of vessels. It did, however, present (2) a claim in a certain amount for the expenditures of the pursuit of the cruisers. It asked the Tribunal to estimate (3) the amount which ought to be paid for the transfer of the American commercial marine to the British flag, adducing, however, no figures. It brought to the attention of the Tribunal, so far as it had come to the knowledge of the Department of State, the amount of the enhanced payments of insurance. The last two items went out of the computation as being "indirect claims." The claim for expenditures for the pursuit of the cruisers was rejected by the Tribunal (as appears by the Protocol of the Conference of the 29th of August) on the ground that the sum so expended was comprised in the cost of the war. Mr. Staempfli and Mr. Adams, however, deemed it admissible as a direct national loss, which indeed it logically seems to have been.[1]

[1] See *post*, Appendix V, for an examination of this interesting question.

This action left remaining only a single item of damages, — that for injuries inflicted upon persons or corporations, owners of ships or cargoes, or upon officers, or crews, of the captured vessels.

The importance of the disposition by the Tribunal of the "indirect claims" is not likely to be overestimated in the future. While it may be contended that the announcement of 19th June, 1872, was not a judgment, but a declaration, still the conclusion reached carries the weight of a thoroughly considered decision. We may pronounce it practically a decision to the effect that claims for the cost of a war, or, as they are fitly denominated, "national claims," do not constitute, upon principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations for a neglect of neutral duties. The effect of this decision was to rule out a claim for about $7,000,000, representing money which had been expended by the Government in fitting-out and maintaining ships of the Navy, engaged in hunting over the ocean for the Confederate cruisers. The other item of claim, namely, war-premiums, was rejected. It will be recalled, however, that when Congress came to provide for the distribution of the money received under the award, war-premium claimants were recognized, and a moderate percentage of the amount of their claims paid to them.

The question at last presented itself: How much

of the sum total of the claims filed, in respect to the vessels for which Great Britain was held responsible, should be allowed. Here there was indeed a field open for guesswork. At one time Mr. Davis thought it likely that the damages awarded would be somewhere between $25,000,000 and $30,000,000.[1]

Before proceeding to inform the reader how the Arbitrators answered this question, let me say a word as to the general defence set up by Great Britain to the claim for damages. If, from a fastidious point of view, the Agent and Counsel of the United States had fairly laid themselves open to censure for proffering claims which afterwards they could not sustain, the ingenious Counsel to whom was entrusted the defence of Great Britain may be considered to have earned the privilege of a mild rebuke for the lengths to which they resorted in their attempt to convince the Tribunal that their country was not liable at all in damages. To refer to a single one of their positions only: it will seem almost incredible, but it is a fact, that Counsel actually advanced the argument that these losses had been caused by the Confederate States; that the acts were done beyond the jurisdiction and control of Great Britain; that the very States that did the wrong were a part of the United States, and therefore that there could properly be no recovery of damages against Great Britain.

"They have been readmitted to their former full par-

[1] MS. Letter, Davis to Fish, *Archives, Department of State.*

ticipation in the rights and privileges of the Federal Constitution. They send their members to the Senate and the House of Representatives; they take part in the election of the President; they would share in any benefit which the public revenue of the United States might derive from whatever might be awarded by the Arbitrators to be paid by Great Britain." [1]

The Treaty provided that in case the Tribunal should find that Great Britain had failed to fulfil any of the duties set forth in the Three Rules, it might award a sum in gross, to be paid in coin by Great Britain to the United States, at Washington, within twelve months after the date of the award: or that a Board of Assessors should be appointed, to ascertain what claims were valid, and what claims should be paid, *et cetera*.

Obviously, it was much to be preferred that a sum in gross be awarded. Such a payment would speedily end all differences growing out of the depredations of the cruisers; and one signal purpose the Treaty had in view was a removal of the cause of dissension at the very earliest moment. Secretary Fish, in a letter of instructions sent to each of the Counsel (8 December, 1871), said: "The President has directed me to urge upon you strongly to secure, if possible, the award of a sum in gross." [2] We find Mr. Davis writing by the middle of August to Mr. Fish that it appeared that the Englishmen had made

[1] *Gen. Arb.*, vol. ii, p. 381.
[2] *Papers*, vol. ii, p. 416.

up their minds to prevent a gross award.[1] On the 25th August, 1872, Mr. Davis reports to Mr. Fish that "the delivery of opinions has left our English friends in a more excited state than I have yet seen them." Yet Chief Justice Cockburn, in his dissenting opinion, declares that it is desirable to settle the matters in dispute as soon as possible, and, therefore, pronounces in favor of awarding a lump sum, which he fixes at $8,000,000.[2]

Mr. Beaman prepared volume seven of the Documents, Correspondence, and Evidence submitted with the Case. This volume contains a list of private claims, classified under the name of the captured vessel. The arrangement also shows the losses, grouped under the titles of the respective cruisers. The list presents an abstract of names and amounts,

[1] MS. Letter, Davis to Fish, *Archives, Department of State.* "You ask in your note to me what the English are after. Simply this, I think: They have been forced to conclude that they are to have some award made against them at Geneva; and they not only want to reduce the amount, by every captious objection, to the lowest possible sum, but they are sore and ill-natured at the thought of having anything to pay at all. I believe that they would rather give us (much as they love money) $20,000,000 in a secret way, though, to square accounts, than to have $1,000,000 publicly adjudged to be due and be compelled to pay it. Only think what a very bitter pill it must be to Great Britain, after being so long accustomed to extort satisfaction from other nations, to find a Government that makes her first own her wrong in a Treaty, and then pay up! That touches her to the quick, however magnanimous may be her professions." MS. Letter, Schenck to Davis, 1 September, 1872, *Archives, Department of State.*

[2] *Gen. Arb.*, vol. iv, pp. 536, 542.

together with a mention of papers on file in the Department of State. It bears date 4 October, 1871. A revised list, dated 15 March, 1872, was submitted with the Counter-Case, in April following.

The Arbitrators requested both parties to prepare tables of figures. The British Agent had previously submitted the list of claims to a committee of the Board of Trade at London, consisting of Mr. Arthur Cohen, a barrister practising in the Court of Admiralty, and Mr. Sydney Young, one of the assessors of that court. The two executed faithfully the task set for them, which involved a prodigious labor. They took up each claim, and tested it in various ways. By this means they effected a large reduction in the totals. Mr. Cohen (subsequently Queen's Counsel and M.P.) came to Geneva, bringing with him the tables prepared at the Admiralty Court and Board of Trade. Mr. Young was also in attendance. Mr. Cohen was busily employed in the work of investigating the figures of the United States, with a view to bringing them down to the lowest amount. It is not easy to decide whether he or Mr. Beaman worked the harder over these tables. Mr. Davis wrote to Mr. Fish commending the assiduous labors of Mr. Beaman as something that deserved the highest praise, performed as they were at a critical time, with admirable skill and judgment.[1]

[1] "During the past fortnight, or three weeks, we have been very busy getting ready for the question of damages, which will

There will be found, in a note appended to the Argument of the United States, an exposition of these various classes of individual claims.[1] The result of the investigation conducted by Messrs. Cohen and Young is commented upon; and reasons are adduced to sustain the higher valuation claimed on behalf of the United States. A letter from William W. Crapo, a leading lawyer of New Bedford, affords much interesting information with regard to whaling voyages, a subject about which most people know little or nothing. It explains the method by which men who ship upon whalers take their chances of sharing in the fortunes of the voyage. The "prospective catch" is the interest which a seaman has in the results of the whaling season. They are paid wages not in money, but in "lays" or shares in the oil and bone taken.

"As certain as the harvest to the farmer is the catch of oil to the whaleman. The average catch of whales

be reached as soon as the vote is taken on Friday. The young men have been occupied late at night every evening in copying. I have also had an accountant from Bowles Brothers, and several writers from Geneva. . . . It is only simple justice to Mr. Beaman to say, without his untiring labor and intelligent superintendence, this work could not have been accomplished." Davis to Fish, 22 August, 1872, *MS. Archives, Department of State.* One day, when I wanted to see Beaman for a moment, I went to his room, where I found him seated at a table, which was heaped with papers. On the other side sat Cohen, in his shirt-sleeves, intent on his work. "I am trying to see," said Beaman to me with a twinkle of the eye, "if I can add up faster than Cohen can subtract."

[1] *Gen. Arb.*, vol. iii, pp. 248–255.

is well known and understood by the merchant and the seaman. Upon this knowledge of probable average catch the sailor readily procures an advance before sailing, and his family obtain necessaries and a support during his absence." [1]

It is to be observed that the Tribunal, while rejecting claims for prospective profits, reserved the question as to allowance in the nature of wages in the case of the whalers; and it may be presumed that they granted something on this account.[2]

Sir Roundell Palmer prepared and laid before the Tribunal an elaborate argument upon the subject of interest. His chief point seemed to be that the present proceeding was not a case of delay in the payment of a liquidated debt; that to allow interest in a proceeding for unliquidated damages is to impose a penalty. The learned Counsel brought in from the Counter-Case the absurd argument which has been in part already cited. He seriously contended that the eleven States composing the Southern Confederacy were now joining in pressing these claims; that if Great Britain be held responsible, she would really have a claim for indemnity against these eleven States; that if everything has

[1] *Gen. Arb.*, vol. iii, p. 254.

[2] The Court of Commissioners of *Alabama* Claims was authorized, by the Act of 1874, to allow one year's wages to officers and seamen. A fairly correct estimate of the value of oil and bone was obtained from quotations; and the Judges approximated as nearly as they might what was a fair allowance of this nature. Frank W. Hackett: *Geneva Award Acts*, pp. 59, 60.

been condoned to them by the Federal Government, it would be inconceivable that a penalty should be imposed by way of augmentation of damages. It is difficult to imagine that such an argument as this could actually have been brought forward with a serious expectation of success. Another objection raised by Counsel is, that the United States had had an opportunity under the Johnson-Clarendon Treaty to settle these claims; and therefore no interest should be allowed after 1869. Then, the Tribunal is advised that the value of the dollar was enormously depreciated by reason of the war, and that an award against Great Britain now would give every claimant a direct gain of over twenty-five per cent. The argument is carried along at considerable length. It does not seem, however, to be very convincing. The reply argument by the Counsel for the United States was brief. It confined itself to showing that the claimant is not compensated for his loss unless interest be allowed.

We may anticipate the order of time by observing that the Arbitrators took precaution that no intimation should reach the public as to the mode followed in computing the amount of the award. Sir Alexander Cockburn in his opinion (inadvertently, it may be imagined) discloses the fact that the Arbitrators allowed six per cent interest.[1]

A vigorous opposition was set up by the British Agent to the course of the United States in sub-

[1] *Gen. Arb.*, vol. iv, p. 543.

mitting to the Tribunal the proof of additional private claims. Lord Tenterden insisted that it was too late to add to the list of claims after once it had been submitted. It does not appear that the Tribunal announced any special ruling upon the point, but there is some ground for inference that the Arbitrators did not feel themselves restricted in this particular.

One afternoon, when the battle of the figures was at its height, an incident occurred, a mention of which should not be omitted from this narrative. Lord Tenterden was just finishing the reading of a paper, in which he had in scarcely veiled terms attributed to the Agent and Counsel of the United States improper motives in presenting the table of claims; and he moved the Tribunal that they disallow the tables so presented. Upon submitting the motion, Lord Tenterden betrayed the nervous excitement under which he was acting.

Sir Alexander Cockburn, at that moment, with a good deal of warmth took up the subject, and in a tone and in language bordering upon the offensive, virtually charged the Agent and Counsel of the United States with preferring claims which they knew were fictitious. I do not pretend, of course, to recite other than the purport of Sir Alexander's words. The substance of the charge I distinctly remember. It was a remark hastily thrown out, and perhaps it sounded worse than the speaker really intended. Quick as a flash Mr. Adams, rising

to his feet at the other end of the Bench, and turning half around so as to face the Lord Chief Justice, exclaimed in a voice quivering with emotion, "I will not sit here, on this Tribunal, and hear my country traduced." With that Mr. Adams moved as if to descend from the Bench and leave the room. For a moment there was silence and a dread on the part of all of us as to what was to follow. Sir Alexander wore a look as if conscious of having gone too far. Count Sclopis arose and, extending his hands, spoke a word or two calmly, but with an air of supreme authority, to soothe the two men thus antagonized. Under the influence of the kindly yet firm bearing of the President, the Englishman (to his credit be it said) offered suitable words of apology. Mr. Adams resumed his seat. It was all over in an instant.

This was the only occasion when I was present and saw anything that in the remotest degree indicated a lack of personal harmony among the members of the Tribunal. It may be said in extenuation of the Lord Chief Justice that probably he was overworked, that for days and nights he had kept himself under such a severe strain that his irritability knew no bounds, with the result that a natural impetuousness and an infirmity of temper for the moment got the better of his judgment.

The task of fixing upon an amount of damages was much lightened by the labors of Mr. Staempfli, who seemed to enjoy the drudgery of going through the mass of figures. He and Mr. Adams, it seems,

were in favor of finding a much larger sum than that named in the award.[1]

After prolonged scrutiny the Tribunal, on the 2d September, arrived at the figures of a gross sum which they thought should be awarded. The amount was fifteen millions five hundred thousand dollars, to be paid in gold within one year. Mr. Cushing thinks that the estimate of Mr. Staempfli had been used as a basis. By taking the difference between the American estimate of $14,400,000 in round numbers, and the British estimate of $7,000,000, one reaches a sum that, with interest, brings out something very near the actual figures.[2]

There is reason to believe that the Agents of the respective Governments were not long unadvised of the nature of the decision reached by the Arbitrators. A confidential message from Mr. Davis in cipher went to Secretary Fish on the 3d September giving the result substantially. The secret was well kept.

Having thus fixed the amount that Great Britain should pay to the United States in satisfaction of all the *Alabama* claims, the Tribunal prepared in French a draft of their decision. They asked Mr. Adams and Sir Alexander Cockburn to provide for the translation of the French text into English.

[1] MS. Letter, Davis to Fish, 17 October, 1872, *Archives, Department of State.*

[2] *The Treaty of Washington*, p. 167. On 2d September a majority of four to one decided that interest should be admitted as an element in the calculation for the award of a sum in gross.

Three days later, on Monday, 9th September, the American and British Arbitrators presented their translation; and the Tribunal adopted it as the act of decision. They agreed that the paper should be signed, as the final act of the Tribunal, on Saturday, 14th September, at half-past twelve o'clock in the afternoon, at a conference, then to be held with open doors.

## CHAPTER X

### THE AWARD

No sooner had our little party alighted at the hotel, upon our arrival at Geneva on 14th June, the day before that fixed by the Tribunal to reassemble, than representatives of the English and American press called to see and "interview" (if they might) the Counsel for the United States. Everybody was in a state of more or less feverish anxiety, hopelessly ignorant whether the Arbitration would go on, or the scheme break down in lamentable failure. Either result was of vital moment to a "waiting public." The men charged with the duty of sending out news to their respective journals were fully alive to the critical import of the situation. Seldom had there been seen a state of tension of a nature so extraordinary.

My recollection is that the moment General Cushing had seated himself in the waiting-room of the Beau Rivage he became the centre of a large group of newspaper correspondents. He was not in the least disturbed. He had a quiet smile for every one. Being an old campaigner, he knew just how to meet the questions volleyed at him. As I stood by, I could not help being struck with the superior quality of these representatives of the

press. To a man they seemed determined to respect the requirement that necessity had imposed, — that, for at least the time being, the Arbitrators, and all persons officially connected in whatever capacity with the Tribunal, should maintain strict silence concerning anything they might know as being said, done or even thought of in respect to the crisis then at its height. The reporters understood precisely the reasons for so strict a rule, and so far from chafing under it, they cheerfully did their part to support the authority of the Tribunal.

The case seldom occurs that a critical state of affairs between two great nations demands on the part of the representatives of the press that degree of self-restraint called for on this particular occasion. The journalists present governed themselves under the conviction that whatever step was about to be taken should be free of the embarrassment which a premature publicity might create. Says one of their number, writing at a later date (15 September): —

"The journalists here did not work a prosperous mine. The rule of secrecy adopted by the Tribunal at its first meeting, and so successfully observed, was a declaration of war against a class of men whose professional duties were by no means hostile to the interests of the Arbitration. Nevertheless they accepted the situation in a good spirit." [1]

[1] Herbert Tuttle: Letter to *Boston Daily Advertiser*, 1 October, 1872. One of the brightest of a group of clever young men engaged

So difficult was it to glean even the scantiest information, that every correspondent made the best of it, and uncomplainingly set to work turning out his regular supply of bricks without straw. A phrase which made its appearance time and again was — "I have reason to believe." A fairly good guess did royal service; and it was no unusual feat to dress up the obvious in a robe of mystery — so that the reader of a morning journal felt satisfied that his informant had penetrated to the heart of things, and knew vastly more than he thought it discreet to divulge. The gorgeously bedizened beadle who stood guard over the closed doors at the Hôtel de Ville rose into international consequence; and when Viscount d'Itajubá was seen coming out of the Conference chatting with Bancroft Davis, the occurrence had a world of meaning for the morrow. Assuredly never before in newspaperdom had so attenuated a rivulet pushed its industrious way through such an immense meadow of margin. For one August day, the correspondent of the London *Times* writes:—

"I much regret that owing to the profound, and doubtless indispensable, mystery in which the proceedings of the Tribunal are enveloped, I should be reduced to send-

In newspaper or magazine work at Geneva, at that season, was this keen-sighted, and remarkably interesting writer. His letters possess a literary flavor that even, after the lapse of years, renders them worth reading; nor is it extravagant to say that here and there they betray almost the touch of genius.

ing you the *menu* of a dinner, in lieu of the summary of a decision."

For the entire period that we were abroad we had daily occasion to observe that the *New York Herald* was looked upon in Europe as *par excellence* the newspaper that reflected American public sentiment. I am not saying that the belief was well founded. I simply state that it existed. The *Herald* had sent to Geneva, according to my recollection, its foreign manager, Doctor George W. Hosmer, whose office was in London, a gentleman of fine abilities; together with a special correspondent in the person of Doctor Sauer. That brilliant writer John Russell Young had likewise put his talent at the disposal of the *Herald*. I think I recall meeting "Sam Glenn" there (who wore glasses), a war-correspondent whom I had known, either at Fortress Monroe, or in the Sounds of North Carolina. I do not remember what newspaper he represented at Geneva. The late Herbert Tuttle sent letters to the *New York Tribune* and to the *Boston Daily Advertiser*.[1]

Doctor Hosmer says:—

"Laurence Oliphant [for the *Times*] was one of the older set of the *Times* men, a gentleman, — genial and

[1] "He was the most scholarly man there — not exactly a correspondent, but an historical student, and afterwards a professor of history, I think at Cornell, — and wrote books." MS. Letter of Samuel Arthur Bent (28 October, 1907), to whom I am indebted for information on this subject.

very clever, with a strain of the mystic, as it appeared in his relations with Noyes of the Oneida Community.

"Mr. Le Sage was there for the *Daily Telegraph*, at present, I believe, the managing editor of that paper. He was a very clever reporter, and wrote readable letters on the obvious aspects of the occasion.

"Richard Whiteing was one of the clever men at Geneva. He represented the *Manchester Guardian*, and the *New York World*. These papers coöperated, as did the *Daily Telegraph* and the *New York Herald*. Whiteing has recently gained distinction as a writer of novels, 'Ring in the New,' 'No. 5, John Street,' and some others. He is a man of the type that grows on the press, but does not grow so plentifully as one might wish.

"There was a clever fellow named Bowles. He was the Paris correspondent of the London *Standard*. He ran over only to take an occasional look at Geneva. I do not think the *Standard* kept a man there, though at that time it was a first-rate newspaper.

"The *New York Herald* had three men. The cleverest newspaper man probably who was on that duty was Macgahan (Januarius Macgahan) who subsequently made a campaign with the Russian column that went to Khiva; made a Carlist campaign in Spain for the London *Times;* wrote for the London *Daily News* the effective description of the Bulgarian atrocities that were preliminary to the Russo-Turkish War, and perished as a correspondent in that war, — a victim of bad system in newspaper offices. His body was brought home by the United States, and was buried at his home in Ohio. Another *Herald* man was George Sauer, a Ger-

man and a naturalized citizen, notable for his facility in several languages, and for his familiarity with the ways and the wiles of the half-diplomatic, half-journalistic world that was in evidence at that time in the little city. I was the third, and as I was responsible for all the *Herald* correspondence in Europe at that time, I was there only to see that the *Herald* should have the best possible service." [1]

A conspicuous figure among the fraternity of writers was Ralph Keeler, a true Bohemian, — who had once been a clerk in the post-office, at Toledo, Ohio, — and so knew Mr. Waite. About two years before, Keeler had suddenly come into prominence by reason of two vagabondish articles of his that appeared in the *Atlantic Monthly:* "Three Years as a Negro Minstrel" and "A Tour of Europe for $181 in Currency." They were for those days a startling novelty. He was now "doing Geneva," I believe, for *Harper's Magazine.* I recall him as being unconventional to a degree. Poor fellow! The next year, on his way to Cuba, as special correspondent of the *New York Tribune,* to prepare a series of articles on an insurrection that was making headway in that lively region, Keeler mysteriously disappeared. It was believed that he had been murdered on the steamer, and his body thrown overboard. Mr. William Dean Howells, who I think discovered him, made this rising young writer the

[1] MS. Letter, Hosmer to Hackett, 18 February, 1908.

subject of a discriminating eulogy in the *Atlantic*, full of feeling. The world of literature it is not unlikely sustained a loss in his tragic death.

Samuel Arthur Bent of Boston (just mentioned in a note) was one of the editors of the *Swiss Times*, an English journal, published for a while at Geneva. Mr. Bent (Yale, 1861) was a cultivated gentleman, of unusual literary acumen, who had flirted with the "jealous mistress," and then had turned his back upon her. He later became one of the editors of *Galagnani's Messenger*, at Paris — but at last he had persuaded himself to stay on the right side of the Atlantic Ocean. His "Familiar Short Sayings of Great Men" (Boston, 1882) is a work original in conception and happily executed — a collection of witty or otherwise notable remarks in brief form, to which is added appropriate explanation or comment, such as only a diligent reader, endowed with discriminating taste, could furnish. The Arbitration was a large-sized affair for a local newspaper to deal with, but I remember that we used to get quite as much mystery and unintelligible information out of the columns of the *Swiss Times* every day, as was paraded elsewhere in more pretentious journals.

Of the English press the *Times* had upon the ground a correspondent of experience — Frederick Hardman, author of "The Spanish Campaign in Morocco" (1860), and other similar volumes. Mr. Bent says: —

"He was a very quiet and gentlemanly man, high on the paper's staff. He never showed himself among the other newspaper men 'nosing' for information. Yet the *Times* knew better than the rest of us what was going on. I always thought he was supplied with such facts as they cared to give out by the British staff, or counsel's clerks."

An engaging young fellow, whom I came to know well (and whom everybody liked) was Rashleigh Holt-White, who represented the *Daily News*. Educated at Oriel, he was bright, refined, and scholarly. He soon got upon friendly terms with all the American party. One of his ancestors was a near relative (a brother, I think) of dear old Gilbert White of Selborne; and one liked this young man, too, for that. Had he lived, he might have attained rank in the walks of literature, for the despatches he sent to his journal displayed an excellence of style — a felicitous touch. Of the American Agent, White wrote as follows: —

"Those who have read the United States Case might be inclined to fancy that Mr. Davis would be a sharp, sarcastic man in his way of talking, whereas he is in reality very bland and affable in manner. Any one who saw him walking down Broadway would certainly take him for a 'Britisher' who had run over to see the States, for he has the physique and dress — even the way of talking — of a Yorkshireman, rather than a New Englander." [1]

[1] London *Daily News*, 22 June, 1872.

At home during the summer of 1872 our newspaper men had their hands full. There was a campaign going on for the election of either Grant or Greeley to the Presidency. Yet the people, particularly on the Atlantic seaboard, were concerned to hear promptly how matters were getting along at Geneva. Of course, all sort of rumors gained circulation — some of them ridiculous. Home talent had to look well to its spurs. The reader will be interested, I feel sure, in the following account from a newspaper man who was actively engaged in Washington at that stirring period in this special line of work: —

"At the time of the Geneva Arbitration, the *New York Herald* bureau at Washington was in charge of George O. Seilhamer, of Chambersburg, Pennsylvania, with Herbert A. Preston, of Boston, as his assistant. I was a special assistant employed on desk work, it being the practice then to print all the Washington despatches together, and to give everything put on the wires a good literary form.

"From the time that the indirect claims were presented in the American Case till they were set aside by the action of the Tribunal, Preston and I gave the Arbitration proceedings our chief attention. I studied everything that appeared in print about the indirect claims, and the dispute over them, whether of domestic origin, or cabled over from abroad. Preston had a large and serviceable acquaintance with all sorts and conditions of men, — in the Cabinet, in Congress, at the foreign lega-

tions, among army and navy officers, who went about in the official and diplomatic set and heard everything that was going; Seilhamer had a special access to three or four useful men that no other correspondent could reach; and quite a number of prominent Senators and Representatives were habitual visitors to the bureau. Altogether, not less than from fifteen to twenty men of political, official, and social importance, in addition to four or five ladies in society, were doing all they could for us, out of good-will for the bureau and its staff; and we also got some useful information from regular and amateur journalists, who knew the bureau to be a good paymaster for all exclusive matter that it could use.

"The result of our internal and external organization and efforts was that the Washington despatches to the *Herald* were notably full and accurate as to the secret doings of each day that the dispute lasted, and quite successful in their forecasts.

"When the excitement was over, Secretary Fish asserted that there had been an obvious leakage from the Washington office of the Western Union Telegraph Company into the Washington bureau of the *Herald;* and clippings of some of our despatches were relied on as proofs that we must have been informed of the contents of cipher cablegrams passing to and fro between Washington and London, and Washington and Geneva. That we were informed of the substance of some of these cablegrams is true, but the information came from more highly-placed sources than could be found in a telegraph office, and had no other price than good-will.

"No leakage was found, but as the Secretary of State was unappeasable, and the New York management of

the telegraph company put pressure upon the home office of the *Herald* to come to its relief, and as some of the important people at Washington who had served us were growing nervous, an arrangement was made by which a scapegoat was found in the person of the telegraph operator at Washington, who was best open to suspicion, and his salary was paid by the *Herald* till he could return to the service of the telegraph company without fear of renewed trouble from Secretary Fish."[1]

The glorious "Fourth" was coming along as usual, and certain ardent patriots among the American newspaper men resolved that it should be celebrated this time with special fervor. Accordingly plans were set on foot, and invitations to "a grand banquet" sent to all the officials of the Tribunal. Unluckily for the success of that part of the programme, the Arbitrators had adjourned the Conference under such terms as permitted everybody to get away from Geneva and not return until after the fourth of July. But Mr. Adams and General Cushing had remained, and they signified their purpose to be present. Following the rather unguarded recommendation of the distinguished grandsire of the former, arrangements were perfected for firing a salute at sunrise on the bank of the Lake, near the Hôtel Beau Rivage, the American headquarters. The guns were fired, one hundred in all. So the day was begun in real old-fashioned style. It was to end with a ball and fireworks.

[1] MS. Letter, Charles F. Benjamin to Mr. Hackett, 5 Feb. 1907.

Horace Rublee, our Minister to Switzerland, presided at the banquet, which was largely attended. Mr. Bent, of the *Swiss Times*, acted as toastmaster. Mr. Adams responded happily to the toast, "The day we celebrate." General Cushing was called upon to speak to the toast, "Our Country." Says Mr. Bent (writing from memory, after the lapse of more than thirty-five years):—

"*The* speech was made by General Cushing. He said he had been studying the Swiss Constitution; and he aroused the audience, of a hundred or more, to great enthusiasm, in his eulogy of the Confederation. I never heard a more eloquent or stirring after-dinner speech." After Cushing had been made Minister to Spain (1874), "he called on me at Paris," continues Mr. Bent, "and invited me to a dinner, at which Washburne, General Sickles, and a few others were present. When I mentioned the dinner at Geneva, his comment was, 'The wines were good.'" [1]

Cushing could talk convincingly about Swiss political institutions, for he had thoroughly explored the subject. He knew all that was to be learned of it from books. Moreover, he had at his fingers' ends many details of the fortunes of Switzerland and her people. As soon as he had settled down for a stay at Geneva, he got together, either by purchase, or by the use of libraries, all sorts of works dealing with the history and traditions of that locality. In a short time probably no antiquarian there

[1] MS. Letter, 1907.

could have surpassed him in a familiarity with the details of what had taken place in that neighborhood deserving of remembrance.

I retain a pleasing recollection of the veteran soldier General Dufour's calling early one afternoon upon General Cushing. The two conversed in French until a very late hour. I doubt not that Cushing's intimate acquaintance with local events of note contributed its full share to induce the Swiss general to prolong his stay. I may add here (even if it be in some sense a repetition) that Cushing's grasp of the political history of Europe, his accurate knowledge of leaders, and even of men of the second rank, in the various states and kingdoms, was simply marvellous. Moreover, he seldom let a day go by that he did not add something to his stock of information.

That particular summer might indeed have been termed a red-letter season for Geneva. On Sunday, 25th August, the town was overrun with people attracted by a great musical fête. The evening was brilliant with illuminations and fireworks. A display of bunting brightened the prospect in every direction, the flag of the Swiss Republic, the Union Jack, and the Stars and Stripes being the most conspicuous. It was thought that never before in her history had Geneva put off so much of her staidness. To me it seemed almost as if I were undergoing a good deal of the sensation of a Fourth of July observance, after all. A grand ball came off at the

Palais Electoral on the following night; and while it could not be said that there was any particular principle of international law at stake, some of us thought it our duty to attend.

No form of hospitality could have been more genuine or more acceptable than that extended by the citizens of Geneva to the eminent men who for a brief season were sojourning there. Geneva did not obtrude her attentions. She let these strangers at once feel themselves at home. In due time (7 September) the officials of the Canton invited the Arbitrators, the Agents, the Counsel and their secretaries to a handsomely appointed dinner at the Hôtel de la Paix. The President of the Conseil d'État, M. Carteret, presided. Everybody attended with the exception of Lord Chief Justice Cockburn. Count Sclopis delivered an excellent speech, full of kindly sentiment. He spoke eloquently of Cavour (in graceful terms reminding the company of Cavour's family connection with Geneva), and voiced the gratitude of all the guests for the hospitable treatment that they were enjoying in that beautiful city. I remember that I sat between two stout Swiss gentlemen, who knew no English. I eked out my scanty store of French as well as I could. There was such hearty good feeling in our neighborhood that all of us were impressed with the idea that we were having a really fine time of it.

"I went with Sir Roundell to a dinner given by the Geneva Council of State, last night. He thought we

could not refuse. I have managed by means of Davis, who is nervous of speaking French in public, to get the speech-making cut down to a speech to Sclopis, and a speech (which he carries about ready written with him) from Sclopis, at both the public entertainments we have been to. I hope to be equally successful at Berne, where I go (as the Chief Justice won't) on Thursday." [1]

Just before the final adjournment was to occur, the Federal Government (11 September) extended their hospitalities to the distinguished visitors who had been engaged within the borders of the Swiss Republic in the work of composing the differences between two great nations. A special train took the Arbitrators (except Sir Alexander Cockburn), the Agents, the American Counsel and secretaries to Berne. Lord Tenterden was the only Englishman of the party, save that one or more of the young secretaries may have accompanied him.[2] Here they were received, at five o'clock in the afternoon, by the President of the Swiss Confederation, in the Chamber of the Council of State. The party were taken, the next day, to Interlaken, and upon their return to the Capital were guests at a State dinner. The President of the Confederation presided, and all the members of the diplomatic corps were present as guests. The Chief Executive (as the report shows) did the honors of the occasion with a simple

[1] Tenterden to Granville, 8 September, 1872. Fitzmaurice: *Life of Granville*, vol. ii, p. 106.

[2] It so happened that two days previously I had left Geneva, the labors of the Counsel having ended.

dignity, and with a genuine cordiality, that were particularly grateful to the American party.

The 14th of September was a beautiful day. For the first time the doors had been thrown open to other persons than those directly and officially connected with the Arbitration. A goodly company (including several ladies) had gathered at the Hôtel de Ville before half-past twelve o'clock, the hour for the Tribunal to convene. The Cantonal Government of Geneva attended in a body, as the guests of the Tribunal. The Countess Sclopis, the Viscountess d'Itajubá, Lady Laura Palmer, Mrs. Bancroft Davis, and Mrs. Evarts, with her daughters, were present. The representatives of the press were also there; as well as a few English and American visitors.

For some unexplained reason the British Arbitrator and Lord Tenterden did not make their appearance until an hour after the appointed time.

The proceedings were opened, as usual, by the reading and approving of the Protocol of the last preceding Conference. Then, by direction of the President, the Secretary of the Tribunal, Mr. Favrot, read in a firm voice the official copy of the decision and award in English, amid the profound silence of the audience. The reading of the French text was dispensed with. Four of the Arbitrators (Mr. Adams, Count Sclopis, Mr. Staempfli, and Viscount d'Itajubá) then subscribed their names to duplicate originals of the decision and award. The

British Arbitrator held aloof, and permitted the document to go upon record without his signature. It was an impressive scene.

A journalist who was present has said that the Lord Chief Justice was "the dramatic member of the Tribunal." He certainly was the chief figure in the foreground of the proceedings upon this memorable day.

"Cockburn was a handsome man; stately, a haughty, clear-limned face, character deeply written. He was very angry. . . . I stood beside his chair, and remember the magnificent scowl as he glared over the assemblage."[1]

At this point Sir Alexander Cockburn arose, and in a clear, musical voice, said that he held in his hand a paper, setting forth his reasons for not joining his colleagues in assenting to the award. With that he produced a bulky collection of sheets, partly in print and partly in manuscript, and handing it to the Secretary, expressed a wish that the "Opinion" be annexed to the Protocol. It did not appear

[1] John Russell Young: *Men and Memories* (1901), p. 361. Young was a facile writer, skilled in that form of embellishment known as the pen-and-ink sketch of public characters. He thus outlines the American group: "Caleb Cushing, with that dark, gypsy gleam, and a flash of triumph in his luminous eyes. Waite, a modest lawyer from Ohio, little dreaming of the supreme honor that was so soon to come to him. . . . Evarts, with his mediæval features, calmly observant. This was our company, governed, so it appeared, by Bancroft Davis, our Agent, to whom, if there were personal honor in a national triumph, more than to any one in that company this triumph belonged."

that any one of his colleagues had seen Sir Alexander's dissenting opinion. But it was no time for technicalities; and Count Sclopis politely replied that the desire of the Arbitrator from Great Britain should be gratified.

The necessary steps were then taken to complete the record of this, the thirty-second and last, Conference. It was decided to sign a third copy to be deposited in the archives of the Conseil d'État, in the Hôtel de Ville, Geneva. The President then, not without signs of real feeling, proceeded to address the Tribunal as follows:—

"Gentlemen, and honored colleagues:—

"Our work is done. The Court of Arbitration has lived its life. During its existence the best relations have constantly been maintained among us. In all that concerns myself, I cannot sufficiently express to you, gentlemen, the gratitude I feel in having been supported by your indulgence and intelligence in the exercise of the delicate functions which you were pleased to confer upon me.

"We have been fortunate in beholding the complete success obtained by the first part of our work regarded solely from an official point of view. No more flattering eulogium could have been conferred on us than that which has been expressed by the highest authorities of the two countries interested. They recognize that we have acted as the devoted friends of both powers. Such has been in fact the real and prolonged sentiment which animated us in the second part of our work, confined, as

it has been, entirely within the limits of the judicial authority conferred upon us by the Treaty of Washington.

"We have employed a scrupulous care and absolute impartiality in order not to deviate for an instant from the rules of justice and equity. The coöperation of the eminent jurists who assisted the two Governments, as well as of the Agents who represented them, has powerfully aided us in this work; and we are happy to be able to offer them all our sincere thanks. We have the testimony of our conscience that we have not failed in our duty. We express the fervent prayer that God will inspire all Governments with the constant purpose of maintaining that which is the invariable desire of all civilized people, that which is, in the order of the moral as well as the material interests of society, the highest of all good, — peace.

"Our last word shall be for Geneva, this noble and hospitable city, which has received us so well; and in bidding it farewell we can assure it that its remembrance will never be effaced from our minds. The Tribunal thought that it might be agreeable to the Government of the Republic to possess among its archives a testimony of what has on this occasion taken place in the Hôtel de Ville. It has, therefore, commanded a copy of the judgment, signed by all the members, to be deposited in the archives of the Conseil d'État. Once more we take leave of the city of Geneva. We wish it all the happiness that it merits." [1]

Amid the hearty applause which greeted the close of the address, the President declared the labors of the Arbitrators at an end, and the Tribunal to be

[1] London *Daily News*, 15 September, 1872.

dissolved. As Count Sclopis spoke these last words, the firing of a national salute began near by, ordered by the Cantonal Government of Geneva. The Swiss artillerymen held aloft the flags of Geneva and Switzerland, displayed between the flags of the United States and of England.[1]

To borrow the language of Mr. Cushing: "It is impossible that any one of the persons present should ever lose the impression of the moral grandeur of the scene." The occasion may repeat itself; but down to that time, no such great international victory of peace over war (for that was its significance) had ever been witnessed. The writer just quoted fitly alludes to "the emotion that was visible on almost every countenance." As the company broke up, they exchanged leave-takings and there was a general rejoicing.

It is with unfeigned reluctance that I quote further from Mr. Cushing; but the incident about to be related forms an important part of the history of the Tribunal; and it ought not to be omitted:—

"To the universal expression of mutual courtesy and reciprocal good-will there was but one exception, and that exception too conspicuous to pass without notice.

"The instant that Count Sclopis closed, and before the sound of his last words had died on the ear, Sir Alexander Cockburn snatched up his hat, and, without par-

[1] MS. Letter, Davis to Fish, 14 September, 1872, *Archives, Department of State; Treaty of Washington*, pp. 126–128; London newspapers.

ticipating in the leave-takings around him, without a word or sign of courteous recognition for any of his colleagues, rushed to the door, and disappeared, in the manner of a criminal escaping from the dock, rather than of a judge separating, and that forever, from his colleagues of the Bench. It was one of those acts of discourtesy which shock so much when they occur that we feel relieved by the disappearance of the perpetrator."[1]

What would be the general finding had been for some little while a foregone conclusion, so that neither the British Agent nor Counsel could have had ground for surprise or disappointment. Lord Tenterden, whom all respected, must at least have felt the satisfaction of having done his whole duty. Sir Roundell Palmer had suffered extremely from gout, and some of his work had been performed at the cost of acute physical pain. He, too, could cherish the belief that the cause of his country had been loyally and ably maintained.

One of the younger men among the newspaper writers who had witnessed the curtain fall upon the drama, though perhaps drawing somewhat upon his imagination, gave to the public his impressions as follows: —

"England will pay the sum with as good a grace as possible, but I thought I saw the sense of a national

[1] *The Treaty of Washington*, p. 128. To tell the truth, there were certain other instances during the stay of the Lord Chief Justice at Geneva, where a slight attention on his part to social obligations might have left an altogether different impression of him from that which the American party was compelled to bring away.

shame, when, after the judgment had been signed, Sir Roundell Palmer gathered up his papers, wiped his flushed brow, and with downcast eyes walked gravely out of the room." [1]

The losing party accepted the result after a manly fashion. Sir Roundell's own words are: "We were all glad when this great International Arbitration came to an end." [2]

The *Times* voiced the sentiment of the great majority of the English people when it said of the dispute that there is "an immeasurable feeling of relief that it is permanently settled." [3] The next day the *Times* administered a balm by praising the British Arbitrator, at the expense of his colleagues. Then, after a little more animadversion (readily to be pardoned), it sensibly concluded: "For the immediate object in view we simply wanted the judgment of five men of sense and honor; we have obtained it, and we cheerfully abide by it."

The text of the Award is as follows: —

"The Tribunal making use of the authority conferred upon it by Article VII of the said Treaty, by a majority of four voices to one, awards to the United States a sum of $15,500,000, in gold, as the indemnity to be paid by Great Britain to the United States, for the satisfaction of all the claims referred to the consideration of the Tribunal, conformably to the provisions contained in Article VII of the aforesaid Treaty." [4]

[1] Herbert Tuttle, in *Boston Daily Advertiser*, 1 October, 1872.
[2] *Memorials*, vol. i, p. 274. [3] London *Times*, 17 Sept. 1872.
[4] *Gen. Arb.*, vol. iv, p. 53.

The Tribunal decided that —

"*First:* The 'due diligence' referred to [in the Three Rules] ought to be exercised by neutral governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfil the obligations of neutrality on their part;

"*Second:* The effects of a violation of neutrality committed by means of the construction, equipment, and armament of a vessel are not done away with by any commission which the Government of the belligerent Power, benefited by the violation of neutrality, may afterwards have granted to that vessel; and the ultimate step, by which the offence is completed, cannot be admissible as a ground for the absolution of the offender, nor can the consummation of his fraud become the means of establishing his innocence;

"*Third:* The privilege of exterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality." [1]

Upon the subject of the supply of coal the Tribunal were of opinion that special circumstances of time, of persons, or of place might combine to render the supply inconsistent with the second rule of the Treaty, namely, that a neutral Government is bound not to permit or suffer either belligerent to make use of its ports or waters as the base

[1] *Gen. Arb.*, vol. iv, p. 50.

of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Viscount d'Itajubá stated that, while he signed the decision, he was of opinion that every Government is free to furnish to the belligerents more or less of that article. It is hardly needful to state that Sir Alexander Cockburn had reached a like conclusion. But the majority of the Arbitrators would seem to have had the better side of the argument. Count Sclopis points out that the *Florida* selected for a field of operations the stretch of sea between the Bahama Archipelago and Bermuda, to cruise there at her ease, while the *Shenandoah* chose Melbourne and Hobson's Bay, for the purpose of going immediately to the Arctic seas, to attack whaling-vessels. He justly regards furnishing a supply of coal in quantities sufficient for such purposes as an infringement of the second rule.[1] Sir Alexander argues ingeniously that machinery and coal have taken in a great measure the place of masts and sails, and consequently that the same principle must apply to them.[2] On the other hand, Mr. Staempfli, after his blunt fashion, has this to say of the coal taken at Melbourne by the *Shenandoah:* —

"The supply of coal was not, therefore, a necessary condition of the neutral asylum; and in supplying her with so large a quantity of coal, the capacity of the ship

[1] *Gen. Arb.*, vol. iv, p. 74. [2] *Ibid.*, p. 425.

for making war was increased, just as much as by the recruitment of her crew which took place."[1]

A graceful incident that followed close upon the final adjournment was the addressing by Bancroft Davis of a personal letter of thanks to each of the neutral Arbitrators: —

*Unofficial.* GENEVA, September 17, 1872.

DEAR SIR: —

I cannot leave Geneva without expressing my deep sense of the value of the services which you and your colleagues from the neutral Powers have rendered to the two great nations which have appeared before you.

Any official acknowledgment which my Government may think proper to make, may reach you through other channels. But I cannot neglect to say that the learning, the intelligence, the skill, the patient labor, the even temper, and the good sense, and above all the absolute impartiality, with which the Arbitrators appointed by the neutral Powers have performed their arduous work, has deeply impressed every American gentleman connected with the Arbitration.

Wishing you a happy return to your home, and the pleasant and tranquil rest which must be grateful after such severe labor, I have the honor to be,

With the most respectful regards,

Your faithful servant,

J. C. B. DAVIS.

It is too much to expect that the race in England will soon die out of those who are not pleased with the verdict rendered at Geneva. A writer in the

[1] *Gen. Arb.*, vol. iv, p. 134.

*Quarterly Review* for April, 1906, of an article entitled "The Old and the New Whigs," who has scant praise to bestow upon the Gladstone Administration, remarks as follows: —

"The terms of the settlement of the *Alabama* Claims at the Geneva Convention of 1872 must always remain a question for dispute, because the full information on either side will never be published. Foreign politics must always remain an imperfect subject for history, since Secretaries, in all countries, 'still keep something to themselves.' Mr. Paul ['A History of Modern England' by Herbert Paul, 1904–5] thinks that the final settlement and the example it gave were (iii, 294) 'achievements not estimable in gold or silver.' Others will still be of opinion that the attempt of the Americans to estimate their grievances in amounts of gold and silver that the lamp of Aladdin could not have procured, and the final award of a sum for the full amount of which, to this day, no honest claimants have been found, were not conclusive proofs of the merits of international arbitration" (p. 323).

As for the merits of arbitration compared with the advantages of declaring war, it will hardly be maintained that the former mode of settling a grave dispute between two high-spirited nations can be depended upon to yield thorough satisfaction and peace of mind to the losing party. We have quoted from the *Quarterly* in order that we might call attention to the harm likely to ensue from instilling into the minds of readers of the present generation

a suspicion that there had been something unfair or dishonest in the conduct of the representatives of the United States, either in obtaining the award or in distributing its proceeds.

That the writer himself, in the warmth of his criticism of Mr. Gladstone and of Lord Granville scarcely realizes, when he uses the expression "honest claimants," the force of what this sinister term may signify, we are quite willing to believe. "Full information" as to "the terms of the settlement of the *Alabama* Claims at the Geneva Convention of 1872" is, however, not so difficult to obtain as he has imagined.

Were our critic to possess himself of all the facts bearing upon the amount of the award, he would ascertain that the sum named did not reach the full measure of the direct damage wrought by the cruisers for whose presence on the high seas Great Britain had been held liable. Nor is this surprising. The English and American rule of damages as applied in courts of law, it must be remembered, does not assume to afford to the injured party complete compensation for an injury sustained.

By the seventh article of the Treaty of Washington, the Tribunal was empowered, should it think proper, to award a sum in gross to be paid for *all the claims* referred to it. The Government of the United States received fifteen million and a half dollars, not as money to be held in trust for individual losers, but as a round sum in payment of a

national claim. It became, therefore, the right of the United States to do with this fund just as it should see fit. In saying this we are not to be understood as contending that moral considerations were to be held as of no account. We mean that the fund did not bear an impress of money that had been paid over for the benefit of any particular class of persons of the United States. As to the character of money so received, English and American courts agree.

Distribution by Act of Congress was made only after prolonged deliberation where opportunity had been afforded to various classes of claimants to appear and be heard. The Act creating the Court of Commissioners of *Alabama* Claims allowed four per cent interest. Had six per cent, the usual rate, been allowed, claimants even then would not have recovered the full amount of their losses. This is observed without taking into account the fact that claimants were compelled to employ and pay counsel, to say nothing of the value of their own time and labor expended in obtaining and presenting proof of their losses.

Prolonged discussion took place before the Committees of Congress, and various arguments were brought forward to support the theories of the several classes of claimants who conceived themselves entitled to share in the fund. Congress provided at first for the hearing and adjudicating of claims growing out of the acts of those cruisers for whose

career Great Britain had been found liable. They were termed "inculpated cruisers." Partly by cutting down the rate of interest, and partly because of the inherent difficulty of proving the amount of loss in the respective claims, there remained a portion of the fund for further distribution. A later Act of Congress provided that claims might be prosecuted for damages on the high seas inflicted by the other Confederate cruisers, — termed "exculpated," and for the application of any remainder, so far as it would go, to war premium claims. This last-mentioned class of claimants recovered only to the extent of about thirty-seven per cent of loss.

As to whether or not a rightful disposition of the Geneva Award money has been effected, we feel assured that no unprejudiced person, who has learned precisely how the fund originated, and who has consulted the debates in Congress, as well as the decisions of the Supreme Court of the United States upon the subject, will be disposed to-day to question the wisdom and the fairness with which the very difficult question of how to distribute this fund was at last determined. The truth is, there was everywhere, and at all times, a purpose evinced on the part of the public men of the United States to apply this money so as to reach the largest number of those American merchants and sailors who had suffered loss through the encouragement afforded by Great Britain to the presence of Confederate cruisers upon the high seas.

# CHAPTER XI

## AFTERMATH

Upon an occasion where it has become necessary for the representatives of several powers to unite in subscribing a document, — such, for example, as a treaty, — it is customary, since all the parties to the instrument act in the place of sovereigns, and therefore stand upon an equality, to determine by lot the order of precedence to be observed in the ceremony of affixing their signatures. If this method were adopted at Geneva — as was probably the case — it curiously enough happened that the first honor fell to the United States. The text of the decision and award, handsomely engrossed, fills twenty folio pages, and is signed in the following order: Charles Francis Adams (in a clear hand, that may be styled elegant), Frederick Sclopis, Staempfli, Vicomte d'Itajubá. Mr. John Davis, who sailed from Liverpool in the *Oceanic*, 29 September, 1872, brought the document home. The sheets are bound in heavy covers, and carefully preserved in a morocco case, in the Library of the Department of State.

These pages being devoted to a narrative of events as they from time to time occurred relating to the origin of the Tribunal created for the settlement

of the "*Alabama* Claims," and the progress of its work, it does not properly come within their province to discuss the opinions filed by the several Arbitrators. The terms of the decision and award have been stated, as a part of the record of what was accomplished by the Tribunal; but space does not suffice for a review of these opinions. Something has been said of the behavior displayed by the Lord Chief Justice in thrusting a bulky document upon his colleagues at literally the last moment, and asking that without reading a word they should assent to making it a part of the record of the proceedings. If the sudden appearance of the document is to be regarded as extraordinary, the nature of its contents when studied will prove to be still more so. It is scarcely to be expected that I should pass it by without a word of comment.

Sir Alexander is prolix in the process of committing his reasons to writing. The paper reads as if the writer had "crammed" for the occasion. He must have dashed off at headlong speed what he had to say, since the "paper" covers no less than three hundred and fifteen (315) closely printed pages of "The Papers Relative to the Treaty of Washington." The four other Arbitrators succeeded in setting forth all they desired to put on record in one hundred and seventy-six (176) pages.

The reader, I fancy, would hardly thank me for giving even a brief résumé of what the Lord Chief Justice has here promulgated. His style is diffuse,

as if his pen had found it easier to run along than to stop. The text of the "Dissenting Opinion" is both argumentative and aggressive. No doubt at the time it pleased many of his countrymen, but there were Englishmen who did not like it. A few of the former class, ardent believers in the superiority of the Chief Justice to his colleagues, may have had the courage and perseverance to read it completely through. I doubt, however, whether half a dozen individuals in the United States, other than newspaper writers, or later-day historians, have ever ploughed far enough into it to learn much else than its drift and general character.

The most striking effect that it appears to have wrought was the calling-forth of a scathing reply from the one American who, being conversant with all the facts, was provoked to attack and demolish the "Reasons" of the Chief Justice. Soon after Mr. Cushing had landed in New York, he went to Washington, and there (at Wormley's Hotel) he completed the manuscript of a book that contains probably one of the most savage rejoinders to an adversary that has been seen in political literature since the days of Junius. The manuscript I carried to New York, where I arranged with a publishing-house for an early appearance of "The Treaty of Washington." The book had been written for the hour. Claimants were eager to learn in an authoritative form what had been done for their relief at Geneva. Mr. Cushing undertook to

let them know, and while doing so to enlighten their minds, and that of the public generally, in respect to what Caleb Cushing thought of the Right Honorable Sir Alexander Cockburn, Lord Chief Justice of England, the Arbitrator named by Her Britannic Majesty. A sufficient reason existed why the senior Counsel for the United States should open his batteries, double-shotted, upon Sir Alexander Cockburn.

If there were any special form of attainment in which Mr. Cushing took pride, it consisted of his familiarity with the political institutions and public law of countries foreign to his own. He had made a lifelong study of the subject, and he felt confident that he had in hand a complete stock of accurate information in shape ready for immediate use. In this confidence he was well justified. It was Cushing who had furnished Chapters Three and Four of the American Argument, entitled, respectively, "General Discussions of Questions of Law" and "Miscellaneous Considerations." I remember taking down from dictation the text of these chapters, at a standing desk, in a chamber of Mr. Cushing's house, in the Rue Galilée; and how greatly I marvelled at the man's learning and his facility of expression. What he dictated required no revision, save possibly a verbal correction or two, the fault of his secretary.

The tone and temper of the British Arbitrator's "Opinion" is anything but judicial. Sir Alexander

descends from the bench, not only to display the vehemence of an advocate, but to act the part of a caustic and virulent critic. His language invites reply. It brought one.

Mr. Cushing had compared the laws of Italy, Brazil, Switzerland, France, Spain, Portugal, The Netherlands, and all other Governments of Europe, except Great Britain, with those of Great Britain herself, in respect to unauthorized military and naval expeditions in violation of neutrality. He argued that the primary fact was the "preventive" action of the Government in those countries first named; whereas, in Great Britain it was the "punitive."

Of this argument Sir Alexander says: "A stranger misrepresentation could scarcely have been penned." "Untrue," "nothing of the kind," "without the shadow of a foundation," — these are terms freely used by the Lord Chief Justice, by way, let it be remembered, of "judicial utterance."[1]

Sir Alexander probably knew which one of the Counsel had written the paragraphs in question, though the fact of authorship was of small consequence, for all three of the Counsel by signing the Argument stood as sponsors for everything that the Argument contained. The Lord Chief Justice's arraignment goes on: "The imagination of the writer must have been singularly lively, while his conscience must have slept, who could venture to

[1] *Gen. Arb.*, vol. iv, p. 284.

put on paper the following passages." Here he quotes three more short paragraphs from Mr. Cushing's text. To still larger excerpts Sir Alexander, in his "Opinion," after styling the language "ungenerous and unjust," replies as follows: —

"There is in this extraordinary series of propositions the most singular confusion of ideas, misrepresentation of facts, and ignorance, both of law and history, which were perhaps ever crowded into the same space, and for my part I cannot help expressing my sense, not only of the gross injustice done to my country, but also of the affront offered to this Tribunal by such an attempt to practise on our supposed credulity or ignorance."

"It is not true," the Chief Justice repeats at the head of three successive paragraphs; and then proceeds to point out "the transparent fallacy which runs through the whole of this series of declamatory assertions." [1]

No wonder that Mr. Cushing's tranquillity disappeared. Such accusations as these levelled against his knowledge of public law we may well believe stung the veteran publicist into rage — all the more, because there was no opportunity for him to meet his assailant face to face. Space does not permit my quoting the form of Mr. Cushing's answer. The reader can turn to Cushing's "The Treaty of Washington," and observe for himself with what spirit its pages are aglow.

The following extract, however, presents a fair

[1] *Gen. Arb.*, vol. iv, p. 286.

specimen of Mr. Cushing's style, and summarizes the complaint that he lodges against the Parthian opponent who has thus fiercely attacked him: —

"While the Chief Justice exhausts himself in fault-finding with the Counsel of the United States, it is observable that he seldom, if ever, grapples with their arguments, but shoots off instead into epithets of mere vituperation. Indeed, if it were worth while, it would be easy to show that he did not really read that which he so intemperately criticises." [1]

To us who can look back upon it after the lapse of years, all this recrimination stands out as an unseemly quarrel. But Mr. Cushing, it must be admitted, had the excuse of intense provocation. He accepted the challenge. He takes Sir Alexander in hand, and administers a rebuke, the like of which is seldom seen. After charging the Lord Chief Justice with "inaccuracy," "confusion of mind," "disingenuousness," and other shortcomings in his "paper," Mr. Cushing winds up by saying that "it was dishonorable in him to smuggle it into the archives of the Tribunal, and to publish it in the London *Gazette* as the official act of an Arbitrator." [2]

Mr. Cushing takes pains to point out that Sir Alexander Cockburn's behavior was not everywhere approved in England. He cites a speech made at Glasgow, 29 September, 1872, by the Chancellor of the Exchequer (Robert Lowe), who said that he

[1] *The Treaty of Washington*, p. 136.
[2] *Ibid.*, p. 149.

regretted that the Lord Chief Justice did not take the course of simply signing the award with the other Arbitrators, it being perfectly well known that he differed from them in certain respects, which would appear by the transactions of the Award.[1]

Before passing from this topic, it may be observed that the Cockburn-Cushing controversy furnishes the solitary instance of a clash between individuals (other than momentary contentions, in the heat of argument, during the sessions of the Tribunal) engaged in the proceedings at Geneva. The labors of the summer, as has already been stated, engendered a feeling of personal esteem between the parties. Englishmen bade Americans good-bye in a friendly manner, and not without regret. Says Markheim (Sir Alexander Cockburn's secretary), writing to me from the Savile Club, London, 19 January, 1873:—

"Everybody here is greatly relieved; and I think the results of the Geneva Arbitration are more and more appreciated, and will continue to be so, by the two countries, now that our *family quarrel* is settled."

As the day drew nigh that was to mark the close of our labors, and with it the breaking-up of an intercourse characterized by mutual respect and good feeling, the idea seems to have occurred alike to each party to have a group photograph taken for purposes of exchange. Our picture was satisfactory, except that, to our regret, Mrs. Waite and

[1] *The Treaty of Washington*, p. 146.

Miss Waite were absent upon a travelling tour. That of the English party was pronounced equally good. It embraced their whole number, with young "Eddie" Palmer (the present Lord Selborne) sitting on the ground in front. Individual photographs were also exchanged. These minor incidents are mentioned as a proof of the agreeable personal relations that subsisted between the parties, notwithstanding the spirit and vigor that in the discharge of official duties had marked a few of our controversial discussions.

Upon the eve of departure from the scene of their successful labors, Mr. Davis and the Counsel observed in a becoming manner the courtesies of the occasion. They united in addressing and sending a letter, 14 September, 1872, to the President of the Council of State of the Canton of Geneva, expressing their grateful acknowledgments for the hospitable treatment that had been accorded them during their stay.[1] A letter of like tenor written at greater length, was despatched by our Agent and Counsel, under date of 15 September, 1872, to the President and Council of State of the Swiss Confederation. This farewell communication, besides thanking the Swiss Government for hospitable attentions, drew a parallel between Switzerland and the United States,

[1] The letter, of course, was written in French. Alluding to Geneva as a city of liberty and of order, it quotes the language of an eminent statesman, who has spoken of Geneva as "*le grain de musc qui parfume le monde.*" *Manuscript Archives, Department of State.*

and pointed out the pleasing resemblance that the dual form of government affords; and conveyed in befitting terms a sense of the high esteem in which the United States hold the Government and the people of Switzerland.

As soon as the Tribunal had come to an end, everybody, with more or less promptitude, departed from Geneva, except that Mr. Adams and his family sojourned for a while in their comfortable country-home near by. Mr. and Mrs. Bancroft Davis, after making a delightful trip through Touraine, sailed for home, 24 October, in the *Saint Laurent*, of the French Line. Allusion has already been made to the visit of Mr. and Mrs. Evarts, early in October, to the Palmers, at Blackmoor, Petersfield. Sir Roundell had been made Lord Chancellor. He was to receive the great seal on the 15th of October. Mr. Cushing found his way to Paris, and sailed by the French Line from Havre.

All three of the Counsel arrived home in season to join in a report to the Secretary of State, under date of 25th November, 1872, closing with an expression of hope that the President would see in the final award of the Tribunal proof that they had not been wanting to the important trust which had been confided to them.[1]

Having a little time at my disposal for travel, I followed the advice of Mr. Cushing and went to England. I visited both universities and nearly

[1] *Gen. Arb.*, vol. iv, p. 550.

every one of the cathedral towns, and journeyed north as far as Perth. Three enjoyable days were spent in Edinburgh, where I witnessed a wrestling match between Cumberland and Westmoreland men, and where on Sunday I heard Dean Ramsay preach.

A happy experience was a visit to Oxford, where I stayed with Markheim at his rooms, Queen's College, of which he was a Fellow. We were summoned to dinner by the sound of a trumpet, — the custom dating, so I was told, from those troublous times when Charles I was finding shelter for a while at Oxford. After dinner we resorted to the "Combination Room," where, as the guest of the evening, I came in for a prolonged questioning about "the States." It was evident that those learned gentlemen (each of whom, I think, save only Markheim, was greatly my senior) had not made the United States of America and its institutions a special subject of their profound study. The evening passed pleasantly, and nothing could have been more frank and hearty than the welcome extended to me by these scholars. I had plenty of time in London, where I took comfortable lodgings in Old Cavendish Street, Cavendish Square. One Sunday I visited the "Tabernacle," to hear the famous Baptist preacher, Spurgeon. The following narrative from notes that I jotted down at the time will, I hope, interest the reader.

By far the most remarkable preacher in London

to-day [1872] is [Charles H.] Spurgeon, who holds well a reputation for eloquence, power, and simplicity of style, for which he became so well known at least twenty years ago. He preached at Kensington, a quarter of London by no means fashionable. I crossed Westminster Bridge, a noble structure, finished ten years ago, which is eighty-five feet in width. Its pavement curves a little upward, but very gradually. On the other side of the river we pass Astley's Amphitheatre — a familiar name. This is the Surrey side of the Thames, so called because in the county of Surrey, whereas the side from which we crossed is in Middlesex.

Mr. Spurgeon's Tabernacle is on Newington Butts Road. It was half-past ten of a Sunday morning when we arrived; service begins at 11 o'clock, and streams of people, all going in one direction, were a sure guide to the building. It presented a tall Greek front, with flights of steps. I passed in the gateway, and found several persons keeping the entrance. A policeman handed me a small green envelope, which was to admit me, saying as he did so that anything I chose to give for a charitable purpose (I have forgotten what) I might enclose in the envelope, and drop into a box, in plain view.

Going down to the bottom of the yard, I mounted some steps, and found myself at last in the first gallery of the Tabernacle, perhaps thirty-five feet above the floor, and not more than fifty feet from the pulpit, or from the space that a pulpit would

have occupied if Mr. Spurgeon had used one. The building, which is of stone and thoroughly made, is of immense size. The proportions, however, are so good that an inexperienced eye like my own would at first hardly suspect its great capacity. There were, I should say, between five and six thousand people present, — at least the Tabernacle easily holds that number, and every seat was taken, the aisles filled, the stairs occupied, and I could see from where I was as many as three or four hundred men and women standing. There is a spacious floor, then a row of seven seats in depth running clear around the building, and another gallery higher up, of even greater depth, at the rear.

Mr. Spurgeon has no pulpit. He uses a common table, a small sofa, and a chair. On the table were a Bible, a hymn-book, a decanter of water, and a glass. The table stands upon a platform that sweeps out into the centre, for perhaps a fifth of the depth of the hall, and is surrounded by a railing.

The congregation appeared to be made up of people of the middle class; and it is to be observed that there were rather more men than women. They were mostly young people; but few grey hairs were to be seen. People were pouring in, and suddenly, while I was watching the flood, the doors were closed — the preacher had come in and was at his table to begin a prayer. There was perfect silence as he began to speak in a somewhat dull but not altogether unsympathetic tone — it seems he was

suffering from a severe cold. As he closed, the doors were thrown open again, and soon there was not an inch of room to spare in the vast edifice.

There was nothing theatrical or sensational about the man. He looked to be thirty-seven or thirty-eight, though he was really probably eight or ten years older than that, — a square-shouldered, broad-chested, well-knit frame; of fair complexion, medium height, and wearing a thin, not long, beard. Not intellectual looking, he reminded you rather of an energetic, successful man of business, who knows human nature, and has plenty of tact and endurance, with a disposition to look on the sunny side of life. Mr. Spurgeon talked not in a high key, but distinctly, and in as pure Anglo-Saxon as any man I ever heard. He certainly spoke English better than any of the Englishmen to whom I have listened. Never at a loss for a word, he yet was not impetuous; nor did he appear to think faster than he could well express himself. His discourse never hurried him; he had it well in hand.

He used gestures a good deal, but nothing of the pump-handle kind. Whenever specially emphatic he would advance to the rail in front (for his desk or table stood in a slanting position at his left, leaving him room to pass forward or back), and sometimes with both hands outstretched he would finish his periods. But it is hardly fair to speak of "periods," for in what he said there was a conspicuous absence of studied arrangement. His sermon was

without notes, — a sheet of paper lay upon the open Bible, — but his remarks were entirely *extempore*. The sight of a reporter sitting just below brought to mind the reflection to how great a number of English men and women was this plain, earnest speaker addressing himself, and how great a power for good must he be.

After a prayer, there was a hymn given out. A man stepped to the left hand of the preacher, and struck the keynote, then the whole assembly sang gloriously a simple tune. No organ, no choir. Then Mr. Spurgeon read a long chapter from Isaiah, with a good deal of running comment. Another hymn followed, in which the preacher joined (timidly, I thought — perhaps the cold explains it), and a long prayer, during which he knelt by the chair at the front. He prayed that they might spend the time together as though it were the last Sunday he should ever preach and pray there. The sight of the whole congregation swaying back to the upright position at the close was wonderful — a sea of faces. And that reminds me I must quote a figure he used in his prayer for those who had much suffered. He said the Lord had indeed "sent wave after wave over them, but may they prove waves to wash and not to drown."

His text was from Isaiah: "A root out of a dry ground." [1] He proceeded to divide the text, or I should say rather his sermon, into four heads, in

[1] Chap. liii, v. 2.

the old-fashioned way. I wonder if I can recollect even three of them: *first*, the meaning of the text temporarily; *second*, its meaning spiritually, — no, I am puzzled at the artificial divisions, but I remember well the drift of his argument. He contended that Christ came at a time when everything was against the growth of Christianity. Human nature is against it, — and he went on to enlarge upon the simplicity of Christ's religion, no choirs singing, no rituals, — "He was the greatest non-Conformist who ever lived"; no gorgeous architecture — "I cannot find these in the Bible." "If God honors a preacher in public, he often makes him smart behind the door with the rod of his correction." There are some learned men whom God can't use. He takes the unlearned in preference. "People go to hear a young man, — they know young men are fools, — or an unlearned man, for when he speaks well and tells the people truths, it is God who does the work." I can give but an imperfect hint at the current of his thoughts. His sermon was not a logical argument, nor an appeal, but rather a rich and stimulating series of illustrations of the truth which he had laid down at the outset, — that it was the root that gave vitality to the soil, and not the soil that afforded growth to what was planted in it. "St. Peter did n't make Christianity; it was Christianity that made Peter."

He was rather pronounced against the Roman Catholics. He praised the Puritans till they took

the sword, "when God swept them away," and he cautioned the Dissenters not to meddle too much with politics. He spoke about an hour, though it seemed not half that time, and closed with an eloquent figure of the great temple of gold where no prince could say I helped build that glorious window or that door of agate; or even angel boast I helped lay that floor of transparent gold, — all was God, God! God!! It was well sustained, and the picture for the moment was wondrous, — the picture not only of the great Temple in our imagination, but the actual picture before our eyes of this single speaker with thousands in front, above, behind and below him, all in rapt attention, while he went forward in conscious mightiness of speech, almost in a rhapsody, yet swaying all as one vast instrument under his perfect and firm control.

While walking in the street, in London, one morning, near the Courts, in company with Mr. Evarts, we met Mr. Judah P. Benjamin, formerly Secretary of State of the Confederate States. Mr. Evarts, who knew Mr. Benjamin, greeted him heartily and presented me. Mr. Benjamin was of medium height and striking appearance. He was exceedingly courteous. He expressed himself as happily enjoying very prosperous times in his new home. Benjamin has been described as "the brains of the Confederacy." He had gained the reputation of being one of the very ablest lawyers that this country has ever produced; and I was particularly pleased

to have the opportunity of meeting him for a few moments, under the wing of Mr. Evarts.

It was my good fortune, after a profitable season of travel, to be a fellow passenger with Mr. Charles Francis Adams on the return home. It was on board of the *Russia*, the crack ship of the Cunard Line, which sailed from Liverpool on the 2d of November. Mr. Adams kept to himself all the way over. I doubt if he exchanged a word (except of needful salutation) with any one of the passengers other than myself, whom he was kind enough to have in his company for two or three hours each day. It was no less delightful than profitable for me to listen to his comments in a free discourse on public men and public events. To the world in general Mr. Adams presented a cold exterior, but I found little by little that he showed himself to be really sympathetic, considerate, and generous. The voyage was to me a season of rare enjoyment.[1]

[1] Among the passengers was Mr. John Hoey, of the Adams Express Company of New York, who seemed to know everybody on board, and whom everybody liked just as everybody used to be charmed by his wife's acting at Wallack's. One day, Mr. Hoey said to me that it would be very gratifying to him, and to many of the passengers, to have an opportunity of shaking hands with Mr. Adams. Accordingly, I told Mr. Adams, and he said he had no objection. He went out on the deck. I introduced Mr. Hoey to him. Mr. Hoey thereupon presented a long line of people. Mr. Adams seemed to be undergoing an ordeal with all the heroism he could muster. There was, it must be confessed, an absence of warmth about it that I, for one, noticed, but Mr. Hoey appeared perfectly well satisfied with the carrying-out of the programme. Certainly Mr. Adams seemed relieved when it was concluded.

I was standing at the side of Mr. Adams when the pilot came on board, and gave us news of the great fire in Boston. A very valuable building belonging to Mr. Adams had been destroyed. He received the intelligence with perfect equanimity. We also heard — and were not in the least surprised — that President Grant had been reëlected. We came up the harbor of New York about sunset, at the close of a beautiful day (13 November, 1872), and had reached — home.

While staying at Portsmouth for a brief period, I accepted an invitation to visit Mr. and Mrs. Adams at Quincy. I shall never forget the pleasure which that visit brought me. In a small building, which I think was of stone, detached from the house and used as a library, Mr. Adams showed me the original of the diary kept by his father, John Quincy Adams, very many volumes in number.

I feel sure that Mr. Adams held in special favor all the gentlemen, both old and young, with whom he was associated at Geneva. He certainly won for himself the unbounded respect and esteem both of his own country and of England. He was officially thanked by the Queen and by the President.

Earl Granville addressed a letter to Mr. Adams, as follows: —

FOREIGN OFFICE, September 28, 1872.

SIR:

I cannot allow the proceedings at Geneva to be brought to a close without expressing to you in behalf of Her

Majesty's Government their acknowledgment for the patience and attention which in your character of Arbitrator you exhibited during the laborious and protracted discussions in which you have been engaged.

Her Majesty's Government sincerely trust that, while the result of the labors of the Tribunal shall obliterate all feelings of animosity between Great Britain and the United States arising out of the events of the late civil war, the proof that has now been afforded that differences between nations may be adjusted by other means than by resorting to war, may conduce to the maintenance of peace among them and to the general welfare and happiness of mankind.[1]

I have nowhere discovered, however, that the Government of the United States at any time expressed their thanks to Sir Alexander Cockburn.

The neutral Arbitrators let it be known that they would decline to receive compensation for their services. After sending to each of them the official letter of thanks, the Governments of Great Britain and the United States, acting in harmony, determined that they would present to each a gift, that should consist of articles of silver workmanship, in grateful memory of his unselfish labor. This plan was accordingly carried out. The presentation to Viscount d'Itajubá took place at Paris, where Mr. Washburne had the pleasure of the company of General Schenck, who happened to be at the French capital upon that occasion.[2]

[1] Granville: *British State Papers* (1873), vol. 74.

[2] During the second winter of his residence at Berlin as Minister

Mr. Bancroft Davis, in his report to Secretary Fish of the successful termination of the interests entrusted to him by the President, after speaking somewhat in detail of the events that occurred at Geneva, concludes as follows: —

"Thus, surrounded by difficulties which at one time seemed insuperable, this great cause has reached its conclusion. Nations have, ere now, consented to adjust by arbitration questions of figures and questions of boundaries; but the world has had few, if any, earlier examples of the voluntary submission to arbitration of a question in which a deep-seated conviction of injuries and wrongs, which no possible award could compensate, animated a whole nation. It is out of such sentiments and feelings that wars come. The United States elected the path of peace. Confident of receiving justice, they laid the story of their wrongs before an impartial tribunal. This story, so grievous in its simple truthfulness, threatened for a time to break up the peaceful settlement which the parties had promised each other to make. Notwithstanding all obstacles, however, the great experiment has been carried to a successful end; and hereafter it can-

of the United States, Bancroft Davis obtained a leave of absence, and went with Mrs. Davis to Egypt. They stopped at various places on the way, and among them at Turin. To quote from a note which Mrs. Davis has lately written to me: "The Sclopis were devoted to us. We dined with them on [the anniversary of] their wedding-day. The table was decorated with the Tiffany silver, a centre-piece and two wine-coolers, if I remember right. After dinner, Countess Sclopis used the coffee-service, which came from Kirk's. There was also a tea-service. The British token was a huge vase, or rather bowl, something like the Warwick Vase, which stood on a pedestal in a corner of the room."

not be denied that questions involving national sentiment may be decided by arbitration, as well as questions of figures.

"The commander who had been permitted, by Providence, to guide some of the greatest military events in history, has thus, in civil life, assisted in presenting to the nations of the world the most conspicuous example of the settlement of international disputes by peaceful arbitration.

"It is within my personal knowledge that your own counsels have also had a large share in shaping this great result." [1]

An eminent man of letters, one, moreover, who has achieved honorable distinction in the field of English statesmanship, has declared that —

"The Treaty of Washington and the Geneva Arbitration stand out as the most notable victory in the nineteenth century of the noble art of preventive diplomacy, and the most signal exhibition in their history of self-command in two of the three democratic Powers of the Western World." [2]

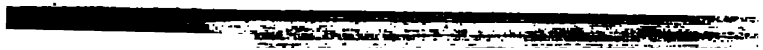
As we, in America, listen to this utterance, we are reminded anew of the spirit with which the best thought of England hastened to sustain that more generous sense of international duty, of the advent of which the triumph at Geneva was the harbinger. Grateful indeed are we that from the date of that event, the bonds of a genuine friendship with our

[1] *Gen. Arb.*, vol. iv, p. 14.

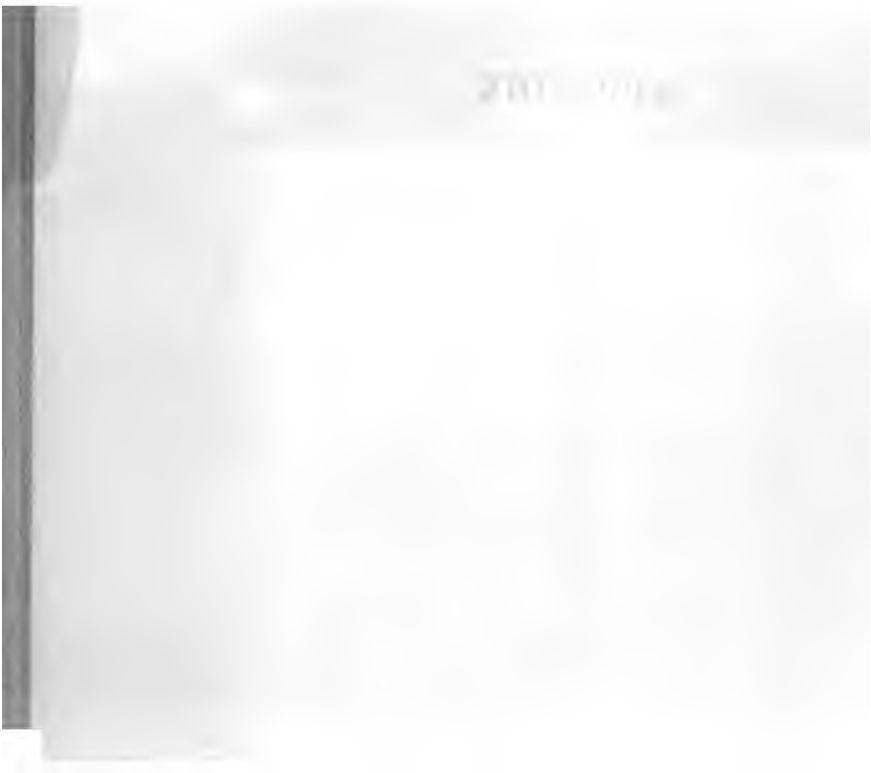
[2] Morley: *Life of Gladstone*, vol. iii, p. 413.

kinsmen across the sea have grown stronger and stronger. May they continue unimpaired for generations!

In parting with my reader let me add a single word of explanation. Should he fancy that any expression of mine in respect to national conduct, or by way of criticising an individual Englishman, be unjust or uncharitable, I would have him reflect that the cordial good-will now happily existing in the two countries tends to banish from memory all thought of that stirring period when estrangement was at its height, — and thus it changes entirely his standpoint. My task has been to draw a picture of those days of dissension and of heart-burning, just as they were, concealing nothing. National sense of injury was forever buried at Geneva. We have been looking at the crowded canvas of nearly half a century ago, only to make out, after all, that the blessings of a perfect understanding and of a mutual liking between the two great nations have thus become by contrast all the more precious.



# APPENDIX



# I

## PROTOCOL OF MAY 4, 1871 — TREATY OF WASHINGTON

(STATEMENT BY JOINT PROTOCOLISTS)

*(From "Mr. Fish and the Alabama Claims," pp. 149-158)*

### XXXVI

PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN

WASHINGTON, May 4, 1871.

The High Commissioners having met, the protocol of the conference held on the 3d of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The statement prepared by the Joint Protocolists, in accordance with the request of the Joint High Commissioners at the last conference, was then read as follows: —

#### STATEMENT

##### ARTICLES I TO XI

At the conference held on the 8th of March the American Commissioners stated that the people and Government of the United States felt that they had sustained

a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent Rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the *Alabama* and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the Rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers, and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement, no estimate was made of the indirect losses,

without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of international law or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two ironclads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the *Alabama* and the other vessels, she had already shown

her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator, with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them, after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the under-

standing that any principles that should be agreed upon should be held to be applicable to the facts in respect to the *Alabama* Claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

At the close of the conference of the 14th of March, the British Commissioners reserved several questions for the consideration of their Government.

At the conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the *Alabama* Claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth

in the rules which the American Commissioners had proposed, viz.:—

[Here follow the Three Rules printed on page 68, *ante*]

It being a condition of this undertaking that these obligations should in future be held to be binding internationally between the two countries,

It was also settled that, in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith as the Arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a Tribunal of Arbitration.

At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them, and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the conference on the 13th of April the Treaty Articles I to XI were agreed to.

## II

## THE RESIGNATION OF MR. MEREDITH AS COUNSEL

William Morris Meredith, of Philadelphia, accepted the office of Counsel, 5 September, 1871, and resigned on account of his health, 17 October, 1871.

Publicity having been given to a statement that the real cause of his resignation was a dissatisfaction with the Case (presumably because of the inclusion of the "Indirect Claims"), it is proper to say that the statement appears to have been without foundation. The error (which may easily be accounted for) deserves to be corrected, for this is the sole instance, I believe, of a blemish on the record of those distinguished men, Hamilton Fish and John Chandler Bancroft Davis, in their arduous and successful work of preparing the papers, and arranging the documentary evidence to sustain the charges brought by the United States against the Government of Great Britain.

It is reasonably certain that Mr. Meredith's withdrawal was due entirely to the consideration of health. The *American Law Register* for April, 1907, contains the following statement: —

"Mr. Meredith was selected by General Grant as one of the Counsel to present and argue the Case of the United States, before the Geneva Tribunal. He accepted the duty and took an active and efficient part in the preparation of the Case and of

the briefs presented. The ultimate decision of the Case in favor of the United States is stated to have been essentially upon the basis of the Argument Mr. Meredith prepared. It is certain he strongly dissented from the portion of the Case and Argument which was overruled by the Tribunal."

This is substantially an extract from a paper read before the Pennsylvania Bar Association, 26 June, 1901, by Richard L. Ashhurst. If Mr. Meredith, as a matter of fact, wrote a brief, I feel quite sure that it was not used by our Counsel in Paris, in the preparation of the Argument.

Nothing in this statement indicates that Mr. Meredith resigned because he was dissatisfied with the Case. Indeed, Mr. Ashhurst continues: "It would have been almost too much to hope that he could in the condition of his health have been able to make the voyage and conduct the argument, and his relinquishment of the journey to Geneva was undoubtedly wise, though a great disappointment to Pennsylvania."

The Honorable J. Hubley Ashton, formerly an Assistant Attorney-General of the United States, and a lawyer of distinction at Washington, wrote to me, 1 February, 1901, just before his death, on the subject of Mr. Meredith's resignation, as follows: —

"I send you a copy of the interesting paper of my friend Ashhurst, on William M. Meredith, whom I knew myself very well in Philadelphia. Judge Black, who knew of course all the great lawyers of the country in his day, said to me that Meredith was on the whole the greatest lawyer he had ever come in contact with. My own impression is that he had more genius, in the general sense of the term, than Mr. Binney, who preceded him in the leadership of our Philadelphia Bar. I may

mention, too, in this connection that Mr. Fish held him in high and affectionate regard as one of the great leaders of the old Whig party of their day, who had been of incalculable service to the country during the War. There is no difficulty, therefore, in accounting for his selection as one of the Counsel of the United States under the Treaty of Washington.

"It has always been my understanding that Mr. Meredith was one of the three gentlemen first chosen by the President, through Mr. Fish, no doubt, to represent the United States as its Counsel before the Geneva Tribunal, and that he was formally tendered the appointment, but was unable to accept it on account of the state of his health, which would not permit him to make the proposed journey to Paris, which was to be the headquarters of the representatives of the Government in Europe. I remember that he called to see me, during a visit to Washington, after the ratification of the Treaty of Washington; and my recollection is that I understood from what he then said, in conversation, that he had declined, or would be obliged to decline, the proposed service for the reason I have mentioned. He had never been abroad, and no doubt a long sea voyage was to him a very formidable undertaking, at that time of his life, and in the infirm condition of his health, especially as it was uncertain how long he might be obliged to remain in Europe, away from his family and home. I remember that I was extremely sorry to hear what he said in that conversation, especially, perhaps, as I had been particularly anxious, quite early, that he, as the great lawyer of Philadelphia, should not be overlooked by Mr. Fish and the President, when the time came to select our Counsel in the case against Great Britain.

"Mr. Ashhurst states, as I understand his paper, that Mr. Meredith in fact acted as one of the Counsel in the Case, at home; but I was not aware of that at the time of the Arbitration.

"My friend, Chief Justice Mitchell, of Pennsylvania, in an address he delivered in commemoration of the Centennial of

the Law Association of Philadelphia, a year or so ago, stated that Mr. Meredith at first accepted the appointment tendered to him by the President, and afterwards declined it, owing to his dissatisfaction with the Case as prepared for the United States; but I do not think that can be an entirely correct account of his action in respect to the matter, and it seems to be inconsistent with what Mr. Ashhurst states in his Memoir.

"I understood from what Judge Curtis said to me, at the time, that he was obliged to decline the proposed service on account of his prior professional engagements, especially in the Supreme Court, which could not be disregarded, or arranged for satisfactorily to himself and his clients."

Mr. Ashton was in a position to know the facts; and the accuracy of his recollection will not for a moment be questioned by any one who ever knew him. A diligent search has been made at the Department of State for the original letter of Mr. Meredith of 17 October, 1871 (for which I thank the several officials), but it cannot be found.

I am happy to testify that my friend, the Chief Justice of Pennsylvania, has generously been at great pains to go into the subject anew, in the hope of reaching the exact truth in the premises. I quote from his letter to me of 27 November, 1907: —

"I have seen Mr. Ashhurst, and learned from him that his statement in regard to Mr. Meredith was based on information from Mr. Meredith's family, particularly his nephew, the late Cadwalader Biddle. On reading what he, Mr. Ashhurst, said, I find that he does not put the matter as strongly as I did, though he agrees with me that that was the general belief of the Bar at the time. I find also that he gives the condition of Meredith's health more weight than I was disposed to. I had supposed that Mr. Meredith was merely asthmatic, but it seems that he had serious cardiac trouble and tendency to dropsy.

"It does not seem possible now to get any further light on the matter, and your suggestion of the reasons for Meredith's action is probably the best, and certainly the safest, that can now be made."

# III

## ANNOUNCEMENT BY THE TRIBUNAL 19 JUNE 1872 IN RESPECT TO THE INDIRECT CLAIMS [1]

THE application of the Agent of Her Britannic Majesty's Government being now before the Arbitrators, the President of the Tribunal (Count Sclopis) proposes to make the following communication on the part of the Arbitrators to the parties interested: —

The Arbitrators wish it to be understood that, in the observations which they are about to make, they have in view solely the application of the Agent of Her Britannic Majesty's Government, which is now before them for an adjournment, which might be prolonged till the month of February in next year; and the motives for that application, viz., the difference of opinion which exists between Her Britannic Majesty's Government and the Government of the United States, as to the competency of the Tribunal, under the Treaty of Washington, to deal with the claims advanced in the case of the United States in respect of losses under the several heads of — 1st, "The losses in the transfer of the American commercial marine to the British flag"; 2d, "The enhanced payments of insurance"; and 3d, "The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion"; and the hope which Her Britannic Majesty's Government does not abandon, that

[1] *Gen. Arb.*, vol. iv, pp. 19–20.

if sufficient time were given for that purpose, a solution of the difficulty which has thus arisen, by the negotiation of a Supplementary Convention between the two Governments, might be found practicable.

The Arbitrators do not propose to express or imply any opinion upon the point thus in difference between the two Governments as to the interpretation or effect of the Treaty; but it seems to them obvious that the substantial object of the adjournment must be to give the two Governments an opportunity of determining whether the claims in question shall or shall not be submitted to the decision of the Arbitrators, and that any difference between the two Governments on this point may make the adjournment unproductive of any useful effect, and, after a delay of many months, during which both nations may be kept in a state of painful suspense, may end in a result which, it is to be presumed, both Governments would equally deplore, that of making this Arbitration wholly abortive. This being so, the Arbitrators think it right to state that, after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these claims, they have arrived, individually and collectively, at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide thereon.

With a view to the settlement of the other claims to the

consideration of which by the Tribunal no exception has been taken on the part of Her Britannic Majesty's Government, the Arbitrators have thought it desirable to lay before the parties this expression of the views they have formed upon the question of public law involved, in order that after this declaration by the Tribunal it may be considered by the Government of the United States whether any course can be adopted respecting the first-mentioned claims which would relieve the Tribunal from the necessity of deciding upon the present application of Her Britannic Majesty's Government.

# IV

## MR. RHODES ON THE ALABAMA CLAIMS

*(From The Nation of January 31, 1907.)*

To the Editor of The Nation: —

Sir: The completion by James Ford Rhodes of "The History of the United States from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877" is an event of no small import in the annals of American historical achievements. The author, as we all know, is painstaking and impartial, and his work bids fair to continue long as the accepted authority for its period. Mr. Rhodes frankly says that the critics of his earlier volumes have been helpful to him in making corrections. Whoever, therefore, discovers an error in his pages feels encouraged to point it out.

Thus I venture to comment on one or two statements, in the chapter of volume VI devoted to the *Alabama* Claims and the action of the United States in 1872 before the Tribunal of Arbitration at Geneva. Mr. Rhodes seems to have done injustice, unwittingly, of course, to an eminent man whose public service has long entitled him to grateful recognition and high praise. I refer to the Hon. John Chandler Bancroft Davis (still living in Washington, at an advanced age), formerly Assistant Secretary of State and Agent of the United States at Geneva, then our Minister to Germany, subsequently a Judge of the Court of Claims, and not long ago Reporter of the Supreme Court of the United States. Only three

men now survive of the American party in attendance at Geneva during the summer of 1872 — Bancroft Davis, Brooks Adams, and myself. From a distinct recollection of what occurred during those memorable months at Paris and Geneva, and from a fairly accurate knowledge of the persons who participated in that great international lawsuit, I feel authorized to speak, both as to the character of the steps taken by the two Governments and as to the labor performed by their representatives. I discuss this matter in the columns of *The Nation*, instead of addressing a private letter to the author himself, for the reason that it is but fair that the effect of his animadversions should be counteracted, so far as possible, in a circle of readers interested in the truth of history.

Lack of space forbids quoting Mr. Rhodes at length, or pointing out all the instances in which his narrative treats unfairly our Agent at Geneva. The following extract is from page 364: —

"The document entitled 'The Case of the United States' is not one for an American to be proud of. It harped on the concession of belligerent rights to the Confederacy, and stated what was untrue when it said that 'Her Majesty's Government was actuated at that time by a conscious unfriendly purpose towards the United States.' This occurs in the first chapter entitled, 'The Unfriendliness of Great Britain,' wherein much that is true is irrelevant and discourteous."

This is a serious indictment. Whether the "Case" be in truth a document for an American to be proud of is, to be sure, a matter of opinion. Bancroft Davis wrote every word of that document. So far as perfect clearness of statement and felicity of expression are concerned, "The Case of the United States" may be pronounced almost

faultless. That it more than met public expectation at the time is evident from the letters of approval and thanks that poured in upon the Agent of the United States from prominent men — lawyers, merchants, authors, and the like — in various parts of the country. Americans in that day were proud of the "Case." Says that most competent critic, Caleb Cushing: —

"It was my opinion on reading the American Case for the first time, and it is my opinion now, that it is not only a document of signal ability, learning, and forensic force, — which indeed everybody admits, — but it is also temperate in language and dignified in spirit, as becomes any State paper which is issued in the name of the United States. . . . The facts are pertinent; its reasonings are cogent; its conclusions are logical."[1]

In a word, the "Case" met the need of a vigorous assertion of our rights, in terms diplomatic and courteous. If it "harped" on the concession of belligerent rights, it must be confessed that the Counsel for the United States (Messrs. Cushing, Evarts, and Waite) kept up the harping in their Argument.[2]

Mr. Rhodes further appears to be laboring under some misapprehension in imagining that Mr. Davis wrote what he knew (or ought to know) was untrue. It was the duty of the Agent of the United States to bring to the attention of the neutral Arbitrators the fact of the existence of unfriendly feeling on the part of the English Government. It is nothing to the point that labored attempts of to-day are undertaking to show that the people of the United States were mistaken as to the spirit animating the governing powers of England during the dark hours of the

[1] *Treaty of Washington* (1873), p. 31.

[2] *Gen. Arb.*, vol. iii, pp. 10–11.

war. Such attempts may succeed in proving that our feelings caused us to exaggerate somewhat the extent of that unfriendliness. But nothing can now be brought forward to shake the convictions established in those days, after deep regret, in the minds of all friends of the Union.

As to the charge of discourtesy, perhaps the best reply is the terse remark of M. Moreau, of Paris, a distinguished member of the French Bar. After he had read the "Case," in the French version, he quietly observed to our Agent: "Vos paroles sont douces; mais vos faits sont brutaux." No one who has ever known Bancroft Davis can for a moment imagine him to have been guilty of discourtesy in any relation of life. Moreover, the charge finds no justification in the pages of the American Case.

"These objectionable statements and arguments of Bancroft Davis, so far as I have been able to discover," continues Mr. Rhodes, "did not in the least strengthen our cause." Yet some time after the Tribunal had finally adjourned, Count Sclopis, upon being pressed for an answer to the inquiry, what was it that gained the award, replied: "The Case prepared by Mr. Davis. It was that which won the cause." The President of the Tribunal spoke the literal truth.

On the day appointed by the Treaty, the United States laid before the Tribunal a clear, explicit, and strong statement of facts — an exposition of the duty of England, and of her failure to perform that duty; a list of the acts and omissions on the part of English officials, together with proof of oft-repeated expressions from those in authority, declaring their sympathy for the success of the Southern Confederacy. The story was told calmly,

and without embellishment, yet with a cogency and force, from the effect of which there could be no escape. It was this superb marshalling of the facts that convinced the Arbitrators of the justice of the American cause.

Mr. Rhodes says further:—

"But chapter I was not the worst feature in the Case of the United States. Chapters I–V were submitted for advice to President Woolsey, Judge Hoar, Caleb Cushing, and Hamilton Fish, but in chapter VI Bancroft Davis gave himself a free hand, and almost wrecked the Arbitration. He revived the national or indirect claims," etc.

The charge that Bancroft Davis "almost wrecked the Arbitration" is entirely wide of the mark. If the clamor in the English press consequent upon the discovery that the American Case did not ignore the "indirect claims," had resulted in a breakdown at Geneva, because of a refusal by England to proceed with the Arbitration, the American Agent could not have been held in the least accountable. The President had directed Mr. Davis to prepare the Case. This labor Mr. Davis performed. He included among "*all* the claims" (to use the words of the Treaty), the indirect claims, "in the exact language of the protocol."

To judge from the extract just quoted, one would suppose that Bancroft Davis, in drafting chapter VI, had acted solely upon his own responsibility. Mr. Rhodes evidently believes such to be the fact. The truth is, so far from giving himself "a free hand," Mr. Davis acted immediately under the eye of his chief. The American Case was submitted to Mr. Fish, who read it through from beginning to end, and approved it in its entirety.

The Secretary of State and the Assistant Secretary acted in perfect official harmony.

When put to the test Mr. Davis had the courage to assume any burden that it had become his duty to assume. It was the tact and the stamina of Bancroft Davis that in the presence of danger actually rescued the Treaty from failure. The world may never know how large a measure of credit is due to the sagacity and the nerve of both Lord Tenterden and Bancroft Davis. Happily for England and for the United States, these two men believed each in the other. Mutual confidence and a unity of purpose enabled the Englishman and the American to work together in preparing a way by which the "indirect claims" could honorably be disposed of, and the Treaty saved. After these two men, upon their own responsibility, had struck hands, it was agreed that Mr. Davis should ask Mr. Adams to take the open and visible step leading to action by the Tribunal. Mr. Adams acted with equal skill. The disposition that was thereupon made of the subject-matter which had threatened a rupture of the Treaty, has now become familiar history. The great principle was then and there settled of the extent to which, in time of war, a neutral Government is liable for failure to observe its obligations to either belligerent. It was this initiative act, the honor of which belongs equally to the respective Agents, that constitutes the crowning merit of Bancroft Davis's inestimable services to his country.

The foregoing observations have been submitted from no spirit of controversy, but only that this chapter in our national affairs may be accurately viewed. I believe that our foremost historian will gladly apply himself anew to

the study of these events in order to ascertain whether, because of imperfect data, this first sketch by him of the Treaty of Washington, and the Tribunal of Arbitration, does not in some particulars need revision.

FRANK WARREN HACKETT.

WASHINGTON, January 24, 1907.

The publication of this letter brought a frank and courteous reply from Mr. Rhodes, then sojourning at Rome; and led at his request to a correspondence, in the course of which the historian expressed his intention to bestow further study upon the subject upon his arrival home, with a view of modifying his statement, should it seem right to do so.

Inasmuch as the reader may have this volume of Rhodes's History in his library, I have thought it advisable, instead of alluding to the subject in my text, to reprint the letter here. I take this occasion to thank Mr. Rhodes for the consideration he has shown me; and for the kindly terms in which he has declared his purpose of correcting his text, if he shall discover that the truth requires it.

# V

## THE INDIRECT CLAIMS AND THE COSTS OF PURSUIT

THE Secretary of State, his special representative, the Agent of the United States, and the lawyers who acted as Counsel for the United States were all charged with a duty of a twofold character. *First*, to obtain reparation in money for injuries inflicted upon the United States and its citizens by reason of the wrongful conduct of the English Government; and, while so recovering judgment against England, to have "all complaints and claims on the part of the United States," generically known as the *Alabama* Claims, adjusted. *Second*, to have a careful eye to the future, and to make sure that in the ardor of contest they did not go too far in pressing their demands, lest the decision of the Tribunal render more onerous than theretofore the restrictions and obligations which the United States would be bound to observe as a neutral; or subject the United States to the danger of being held responsible in damages beyond what they previously had admitted to be just and reasonable.

Mr. Fish wisely observed: "It is not the interest of a country situate as are the United States, with their large extent of seacoast, a small Navy, and smaller internal police, to have it established that a nation is liable in damages for the indirect, remote, or consequential results of a failure to observe its neutral duties. This Government expects to be in the future, as it has been in

the past, a neutral much more of the time than a belligerent." [1] This consideration our representatives at Geneva bore constantly in mind. The United States were not seeking a merely temporary triumph. Secretary, Agent, and Counsel alike were exercising a larger vision.

That the Arbitrators awarded a substantial sum to be paid to the United States for the satisfaction of *all the claims* is proof that our Agent and Counsel ably performed their duty in the first particular named. The President expressed to Mr. Davis, to the Counsel, and to the other gentlemen engaged at Geneva "his thanks and high appreciation of the great ability, learning, labor, and devotion to the interests, the dignity, and honor of the nation which each in his appropriate sphere has made so successfully conducive to the very satisfactory result which has been reached." [2] Nor is this the mere complimentary language of an official routine. I have reason to know that Mr. Fish, who is here speaking for the President, was privately generous in his praise to individuals; and especially so to his friend, Mr. Bancroft Davis, in whom he had, with such good reason, implicitly trusted.

As regards the second part of the duty in question, we perceive that the outcome of their judicious conduct was that an expression of opinion was obtained from the Tribunal that certain claims for indirect or remote losses, growing out of the depredations of a cruiser on the ocean, were decided to be non-admissible, in a cause where a belligerent complains of a neutral for neglect in not pre-

[1] Fish to Schenck, 23 April, 1872, *Gen. Arb.*, vol. ii, p. 476.

[2] *Gen. Arb.*, vol. iv, p. 545.

venting the escape of that cruiser; that a demand for compensation cannot be successfully maintained under the principles of international law. The gravity of this announcement by so authoritative a tribunal as that at Geneva is obvious.

Here we may fitly pass under review the language of a commentator on this last-named decision of the Arbitrators, — one to whose utterances unusual weight is due, not less from his familiarity with the subject-matter than because of his learning and his long experience in the domain of international law. I refer to Mr. Caleb Cushing's exposition in his book, "The Treaty of Washington," [1] under the sub-title, "Review of the Decision of the Tribunal on National Losses."

Of the announcement, 19 June, 1872, that removed from the field of contention the indirect claims (popularly so called), Mr. Cushing had remarked that the Arbitrators had suggested no distinction between the direct and the indirect claims in their declaration, but that their omission to state reasons for their declaration was subsequently supplied.[2] Mr. Cushing means that when they came to pass upon a claim of indemnity for the costs of pursuit of Confederate cruisers, they rejected it, saying that these costs "are not, in the judgment of the Tribunal, properly distinguishable from the general expenses of the war carried on by the United States."

Before quoting the comments of this eminent jurist upon this language of the Tribunal, let a single word be introduced with regard to the decision itself upon the claim proffered by the United States for the costs of pur-

[1] *The Treaty of Washington*, p. 153.

[2] *Ibid.*, p. 71.

suit of the cruisers, a decision reached by a vote of three to two. Mr. Staempfli and Mr. Adams declared the claims to be admissible, as belonging to the direct losses.[1] These two Arbitrators reserved to appreciate the amount of the losses according to the bases laid down in the table (at page 120 of the Seventh Volume of the Appendix to the Case of the United States). It is difficult to see wherein the conclusion reached by the Swiss and American Arbitrators is not the logically sound one.

What were the facts?

The United States contended that the Confederates had no navy on the ocean, and no means of putting one there, save through the neglectful conduct of the English Government. England was their dockyard. That upon the receipt of news that private property was being destroyed, it became the duty of the Government of the United States to make every possible effort to search for and capture the depredating cruiser. That the Government did proceed regularly to equip and send forth in pursuit of the several cruisers a fleet of armed steam-vessels; that this was carried on as a distinct branch of naval operations. That most of the ships so ordered to search for the Confederate cruisers constituted just that much of a reduction from forces that could be employed in blockade duty, or from service in capturing positions on the coast held by the enemy.

The Navy Department had prepared tables, showing a list of the vessels so despatched, together with the items of charge incurred for equipping and for maintenance. The total of this expenditure aggregated a little more than seven millions of dollars. This sum included the

[1] *Gen. Arb.*, vol. iv, p. 43.

estimated value of one or two vessels of the United States that had been captured (the *Hatteras* was sunk by the *Alabama*) and two barks taken while under charter, carrying coal belonging to the United States. The figures were perhaps open to criticism in some instances; but that a large sum was expended by the Government solely for the purpose of protecting the commerce of the United States by ridding the ocean of these cruisers, not a dollar of which expenditure would have been needful but for their escape from English ports, is not open to doubt.

It would seem, therefore, that the real question presented was, Is the loss thus sustained by the United States a loss directly resulting from the presence of the cruisers upon the ocean?

So far as concerns the vessels actually captured or sunk, the loss seems to be in no wise different from that of vessels owned by private persons, — citizens of the United States. Is the cost to which the United States was subjected in order to capture (if possible) the Confederate cruiser a direct loss to the people of the United States? That is to say, Did the cruiser cause the expenditure? Or, were there intervening causes of a character to render these expenditures a remote or indirect loss? There would seem to be but one answer. True, the expenditure was a part of the expenses of the war. Was it, or not, distinct from the general expenses of the war, so that it can fairly be said that the cause of these particular expenditures was the neglect of the English Government in not preventing these ships from leaving port? For myself, I am unable to perceive the difference between the loss of the cargoes of coal belonging to the

United States and the loss of private property. Upon the whole question I am brought to the conclusion that the costs of pursuit constituted a direct loss, capable of a fairly exact computation, and that Great Britain should have been held to respond in damages therefor.

I concede, of course, that Great Britain could have been held liable only where the costs of pursuit were directly traceable to the presence on the ocean of a particular cruiser, in respect to whose sailing that country had previously been found responsible in damages. If a ship of the United States Navy had been sent out to intercept the *Georgia*, for instance, and not the *Alabama*, etc., it may be granted that no liability for such expenditure is proved. But the principle remains, I submit, that in the case of the several cruisers for whose depredations Great Britain was held liable, the costs of pursuit were direct losses sustained by the United States, and as such they formed a valid ground for indemnity.

The text of the Tribunal's decision is brief. "The costs of pursuit of the Confederate cruisers are not in the judgment of the Tribunal properly distinguishable from the general expenses of the war carried on by the United States." If these words are to be taken as meaning that the costs, as they appear in proof, are not capable of being segregated, and passed upon as a distinct class of expenditures, the assumption is evidently erroneous. I conceive that what the language of the decision really signifies is, that, in the opinion of the majority, the costs of pursuit are war expenditures; and, therefore, are not to be regarded as other than the usual expense which war entails upon a Government; they are not open to be examined further, or to be traced to any special cause. This inter-

pretation is at least intelligible; but, with all due respect, let me say that it does not seem logical. The expenditure is distinguishable in fact. Does the Tribunal decide that the loss is an indirect loss? There is reason to argue that it does, since the dissenting Arbitrators take pains to pronounce it a direct loss.

No great aid upon this interesting point appears to have been rendered the Tribunal by the Arguments of the contending parties. The United States contented itself with characterizing the claim as one for a direct loss, and said little else, as if nothing further were needed to be said.[1] The British Counter-Case pronounced it "an unheard-of demand." Neither side can be said seriously to have attempted a discussion of the claim upon principle. Three or four pages of the British Counter-Case, it is true, are devoted to its consideration; but what is there presented amounts to little more than a contention that it is not possible to contest the validity of such claims, — not possible to find out how much was in fact expended. After protesting a natural reluctance to criticise the management of the United States Navy, the Counter-Case goes on to do this very thing, somewhat in detail, observing that "it appears extraordinary that more energy was not displayed in pursuing, etc." A hint is virtually thrown out that the British Navy would have been far more effective, at a much less expense.[2]

The British Argument, it is well to bear in mind, actually set up the defence that the destruction of private property of American citizens on the high seas was an indirect loss, so far as the neutral nation was concerned,

[1] *Gen. Arb.*, vol. iii, p. 216.

[2] *Ibid.*, vol. ii, pp. 388–91.

and that it furnished no ground for demanding an indemnity.

It is to be regretted that the principle involved in the question of costs of pursuit was not fully argued. Had it been, the decision of the Tribunal might perhaps have been expressed in terms less open to misconception.

But to Mr. Cushing. He remarks:[1]—

"The Arbitrators had to pass on a claim of indemnity for the costs of pursuit of Confederate cruisers by the Government; — a claim admitted to be within the jurisdiction of the Tribunal, and which the Tribunal rejects on the ground that such costs 'are not, in the judgment of the Tribunal, properly distinguishable from the general expenses of the war carried on by the United States.'

"Here the major premise is assumed as already determined or admitted, namely, that the general expenses of the war are not to be made the subject of award. Why not? Because such expenses are in the nature of *indirect* losses? No such notion is intimated. Because the claim, as being for *indirect* losses, is not within the purview of the Treaty? That is not said or implied. Because such a claim is beyond the jurisdiction of the Tribunal? No; for the Tribunal takes jurisdiction and judges in fact. The question then remains, Why is a claim for losses pertaining to the general expenses of the war to be rejected?"

Now, does it not occur to the reader that all this is ingenious of its author? Mr. Cushing, in his text just before this quotation begins, calls attention to the fact that the Arbitrators in their disposition of the indirect claims (or, as he prefers to call them, the claims for "national losses") express a conclusion, not the reason of the conclusion. Here, in giving a reason, they are made

[1] *The Treaty of Washington*, p. 153.

by Mr. Cushing to negative a reason because of their silence. What right has a commentator to conclude that the Arbitrators do not consider a claim for the general expenses of the war to be a claim for indirect losses, simply because they are silent? Of course, no claim was brought forward for "the general expenses of the war."

In my judgment, the majority Arbitrators (and I think the reader will agree) rejected the claim for costs of pursuit because they considered it a claim to recover for a part of the general expenses of the war; and they deemed it unnecessary to explain that the general expenses of the war, so far as England was concerned, could not be properly made the subject of a claim, because they were in the nature of indirect losses.

But let us hear Mr. Cushing further:—

"There can be no mistake as to the true answer. It is to be found in the preliminary opinion expressed by the Arbitrators.

"The Tribunal, in that opinion, says that the controverted [the so-called indirect] claims 'do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations.' Why does not the injury done to a nation by the destruction of its commerce, and by the augmentation of the duration and expenses of war, constitute 'a good foundation for an award of compensation or computation of damages between nations'? The answer is that such subjects of reclamation are 'not properly distinguishable from the general expenses of war.'

"Let us analyze these two separate but related opinions, and thus make clear the intention of the Tribunal. It is this:—

"The injuries done to a Belligerent by the failure of a Neu-

tral to exercise due diligence for the prevention of belligerent equipments in its ports, or the issue of hostile expeditions therefrom, in so far as they are injuries done to the Belligerent in its political capacity as a nation, and resolving themselves into an element of the national charges of war sustained by the Belligerent in its political capacity as a nation, do not, 'upon the *principles of international law* applicable to such cases' [excluding, that is, the Three Rules], constitute 'good foundation for an award of compensation or computation of damages between nations.'

"Such, in my opinion, is the thought of the Arbitrators, partially expressed in one place as to certain claims of which they did not take jurisdiction, and partially in another place as to others of which they did take jurisdiction, — the two partial statements being complementary one of the other, and forming together a perfectly intelligible and complete judgment as to the whole matter." [1]

It looks as though Mr. Cushing had gone out of his way in order to find an answer to the question that he has put, "Why does not the injury done to a nation by the destruction of its commerce, etc., constitute a good foundation for an award?"

The proper answer in this instance is that such an injury is not the direct and proximate result of the negligent conduct of the neutral nation. While the escape of these cruisers may have extended the period of the duration of the war, it could have done so only indirectly. Other causes more potent were operating in that direction. The effect, however considerable, was a remote effect.

To lay down the proposition that the injury done to the United States by the destruction of its commerce is

[1] *The Treaty of Washington*, pp. 154–155.

not properly distinguishable from the general expenses of the war is to confound two kinds of losses which in their nature are essentially different. "Expenses of the war," as the term is used by the Arbitrators, signifies money paid out, or an indebtedness incurred, that sooner or later must be discharged by the payment of money. Such expenses are readily calculated, and are capable of being accurately expressed in figures; they are sums actually laid out. Losses because of the destruction of a nation's commerce are necessarily vague and indeterminate; in short, quite impossible of being estimated. One is a direct loss, the other an indirect one. The former may be, however, a loss for which the neutral nation is in no wise responsible. In this event, the damage is only an indirect damage, as far as the neutral is concerned.

Mr. Cushing apparently declines to lay hold of the real reason behind the decision of the Arbitrators. There could be no other reason than the relation which, in their judgment, the loss bore to the acts, or to the neglect of the British officials. Where the injury is seen to be directly due to the escape of the cruiser, a responsibility attaches to Great Britain; otherwise, not. Let me repeat that, in my opinion, the majority Arbitrators fell into error in concluding that the costs of pursuit were not a direct loss inflicted on the United States by the culpable neglect that permitted the cruisers to get out on the ocean. That neglect was immediately connected with the expenditure which the United States were compelled to incur in order to send ships of the United States Navy in pursuit of the Confederate armed vessels. I am unable to perceive what difference it makes that the injury is

done to the belligerent "in its political capacity," or done to it through losses brought upon its citizens. The question remains, Is it a direct injury, — is the loss a direct loss?

Naturally Mr. Cushing, because of his long training in diplomatic affairs, felt the desire to make the most of this decision as to the costs of pursuit, so that his country might be protected in years to come, while acting the part of a neutral. It is not surprising, therefore, that he draws conclusions as follows: —

"The direct effect of the judgment as between the United States and Great Britain is to prevent either Government, when a Belligerent, from claiming of the other, when a Neutral, 'an award of compensation or computation of damages' for any losses or additional charges or 'general expenses of war,' which such Belligerent, in its political capacity as a nation, may suffer by reason of the want of due diligence for the prevention of violation of neutrality in the ports of such neutral. That is to say, the parties to the Treaty of Washington are estopped from claiming compensation, one of the other, on account of the national injuries occasioned by any such breaches of neutrality, not because they are *indirect* losses, — for they are not, — but because they are *national* losses, losses of the State as such. And each of us may, in controversies on the same point with other nations, allege the *moral* authority of the Tribunal of Geneva."[1]

This announcement is of first importance, provided it shall be proved to rest upon a solid foundation. For one, I find myself unable to assent to the doctrine it affects to promulgate. If I rightly apprehend Mr. Cushing's reasoning, it is that the character of the sufferer, and not the character of the loss, determines whether an award in

[1] *The Treaty of Washington*, pp. 155–156.

these circumstances shall be declared against a neutral; or, in other words, that no loss sustained by a nation, in its political capacity, by reason of the neutral's culpable action, can furnish a foundation for an award of damages against that neutral.

From an inspection of the record, it does not appear that the Tribunal, as a matter of fact, decided that claims for the capture of cargoes of coal belonging to the United States, in merchant vessels under charter, could not be sustained. The truth is, the precise question does not appear to have been made the subject of a decision. The rejection of the claim of the United States for the costs of pursuit was not based, I think, as Mr. Cushing would have us believe, upon the ground that it was a war expenditure, and for *that reason* inadmissible; but because it was not a *special* war expenditure. It was so mixed up with general war expenses that the Tribunal could not pronounce it a direct loss. Whoever to-day cares to study the problem is likely, I think, to conclude that these costs could readily be distinguished, with a fair degree of arithmetical accuracy, as an expense directly brought upon the United States by the neglectful conduct of the British Government. It remains, however, that the majority of the Arbitrators reasoned differently. They put their decision on the ground that the claim of the United States for this item of loss was an indirect claim; that it was a national claim for an indirect loss.

The happy solution of a most grave international controversy by the decision and award at Geneva, combined with other causes of a like peaceful import, will have the effect, it is to be hoped, to prevent in any future war the recurrence of a necessity to look into charges of failure in

neutral duties, such as those now long since atoned for and practically forgotten. Perhaps such a question as "costs of pursuit" may never be raised again. If it should be, however, it is to be feared that the construction of this decision of the Arbitrators, advanced with so much subtlety by Mr. Cushing, will hardly bear the test of an actual application.

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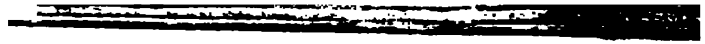

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